No. 16-1498

In the Supreme Court of the United States

WASHINGTON STATE DEPARTMENT OF LICENSING,

PETITIONER,

v.

COUGAR DEN, INC., A YAKAMA NATION CORPORATION,

RESPONDENT.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF WASHINGTON

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JUNE, 14, 2017
CERTIORARI GRANTED JUNE 25, 2018

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STATE OF WASHINGTON

YAKIMA COUNTY SUPERIOR COURT

COUGAR DEN, INC., a Yakama Nation corporation, Petitioner, v. STATE OF WASHINGTON DEPARTMENT OF LICENSING, Respondent.	NO. 14-2-03851-7 AGENCY RECORD, CERTIFICATE OF AGENCY RECORD AND INDEX

I, Paul Johnson, the undersigned Administrator, hereby certify that the following record contains all the matters considered in the administrative proceeding for the above-entitled matter.

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Dated this *14* day of *January*, 2015.

DEPARTMENT OF LICENSING
BUSINESS AND PROFESSIONS DIVISION

s/ Paul Johnson
Paul Johnson
Program Manager

STATE OF WASHINGTON
DEPARTMENT OF LICENSING
Prorate and Fuel Tax, Fuel Tax Unit
PO Box 9228 • Olympia, Washington 98507-9228

December 9, 2013

Kip Ramsey
Cougar Den, Incorporated
620 Signal Peak Road
White Swan, Washington 98952

Assessment Number: 756M

Dear Mr. Ramsey:

Importing fuel without a license

We received reports from Oregon Department of Transportation, Fuels Tax Group, showing your company imported fuel to Washington from Oregon in March through October 2013. These imports are subject to Washington taxes under chapters 82.36 and 82.38 of the Revised Code of Washington (RCW). The current amount owing is $3,639,954.61, including tax, penalties, and interest. Please review the following chart for a breakdown of the tax, penalty, and interest owed:

Special Fuel (SF) (RCW 82.38)

2013	Gallons	Tax (RCW 82.38.030)	Penalty (RCW 82.38.170)
March	23,157	$8,683.88	$868.39
April	163,344	$61,254.00	$6,125.40
May	195,661	$73,372.88	$7,337.29
June	321,623	$120,608.63	$12,060.86
July	295,101	$110,662.88	$11,066.29
August	320,669	$120,250.88	$12,025.09
September	360,579	$135,217.13	$13,521.71
October	351,606	$131,852.25	$13,185.23

[chart cont'd]

Unlicensed Imports Penalty	Interest (RCW 82.38.170)	Total
Not applicable	$894.91	$10,447.18
Not applicable	$5,582.83	$72,962.23
Not applicable	$5,882.04	$86,532.21
Not applicable	$8,161.84	$140,831.33
Not applicable	$6,209.41	$127,938.58
Not applicable	$5,370.94	$137,646.91
Not applicable	$4,506.93	$153,245.77
Not applicable	$2,915.25	$147,952.73
	SF Total	$877,556.94

Motor Vehicle Fuel (MF) (RCW 82.36)

2013	Gallons	Tax (RCW 82.36.025)	Penalty (RCW 82.36.040)
March	18,501	$6,937.88	$138.76
April	304,199	$114,074.63	$2,281.49
May	320,652	$120,244.50	$2,408.89
June	529,753	$198,657.38	$3,973.15
July	537,547	$201,580.13	$4,031.60
August	602,136	$225,801.00	$4,516.02
September	540,516	$202,693.50	$4,053.87
October	594,464	$222,924.00	$4,458.48

[chart cont'd]

Unlicensed Imports Penalty (RCW 82.36.080)	Interest (RCW 82.36.045)	Total
$6,937.88	$1,466.23	$15,480.74
$114,074.63	$21,587.96	$252,018.70
$120,244.50	$20,125.39	$263,019.28
$198,657.38	$28,947.05	$430,234.95
$201,580.13	$25,050.50	$432,242.35
$225,801.00	$23,266.60	$479,384.62
$202,693.50	$16,624.94	$426,065.81
$222,924.00	$13,644.74	$463,951.22
	MF Total	**$2,762,397.67**
	Total Assessment	**$3,639,954.61**

What you must do

Within 30 days of the receipt date of this letter, you must either:

- pay this assessment, or
- submit a written appeal or request for reassessment

Payment Instructions

Send payment, via electronic funds transfer to the Department of Licensing. Follow the instructions below to complete your EFT wire or ACH transfer:

Bank Name:	Bank of America
Branch:	Olympia, Washington
Name of Bank Account:	Washington State Treasurer – Concentration Account
Checking Account Number:	105000000604
Telegraphic Abbreviation:	Bank of America
ACH Transit Routing Number:	123308825
Wire Transit Routing Number:	026009593
Comment/Message:	Assessment 756M

After 30 days, an additional 10 percent late payment penalty is added to the taxes due, unless payment is received. On the first of each month, 1 percent interest is applied to the unpaid balance.

Licensing Requirements

Per Washington State law and the 2013 "Fuel Tax Agreement Concerning Taxation of Motor Vehicle Fuel and Special Fuel between the Confederated Tribes and Bands of the Yakama Nation and the State of Washington," Paragraph 4.3b, you must be properly licensed as an importer to continue importing fuel. Therefore, I have enclosed the required application materials.

Appeal Instructions

If you decide to appeal this assessment, mail your explanation or reason for appeal or reassessment to:

Fuel Tax Section
Department of Licensing
Post Office Box 9228
Olympia, Washington 98507-9228

The procedures that apply to appeals are described in sections 308-72-930 and 308-77-102 of the Washington Administrative Code (WAC). The Revised Code of Washington and the Washington Administrative Code are available online at: http://www.leg.wa.gov/LawsAndAgencyRules/Pages/default.aspx.

If we do not hear from you within 30 days, this assessment becomes final and closed to further appeal.

Questions

Contact Ann Diaz at (360) 664-1853 or email adiaz@dol.wa.gov.

Respectfully,

s/ Paul W. Johnson
Paul W. Johnson
Fuel Tax Manager
Prorate and Fuel Tax Services

cc Thao Manikhoth, Administrator - Prorate and Fuel Tax Services
Compliance Unit
Fuel Tax Unit

Enclosures

STOKES LAWRENCE
VELIKANJE MOORE & SHORE

Andre M. Penalver
(509) 895-0096
Andre.Penalver@stokeslaw.com

Reply to Yakima Office

January 3, 2014

Fuel Tax Section Department of Licensing
P.O. Box 9228
Olympia, WA 98507-9228

Re: Assessment Number: 756M Letter of Appeal

To Whom This May Concern:

This letter is an appeal of the December 9, 2013 notice of assessment that the Department of Licensing ("the Department") sent to Kip Ramsey and Cougar Den, Inc.

After our review of the matter, we conclude that Mr. Ramsey and Cougar Den, Inc. owe no taxes, penalties or interest because Mr. Ramsey never imported fuel within the meaning of the statutes. Separately, Mr. Ramsey is not subject to a state fuel tax because he is a member of the Yakama Nation. For these same reasons, Mr. Ramsey has no obligation to get a fuel importing license.

A. Kip Ramsey Never Imported Fuel to Washington.

The Department asserts that Mr. Ramsey and Cougar Den are subject to taxes under Chapters 82.36 and 82.38 RCW because they allegedly "imported fuel to Washington from Oregon in March through October

2013." Mr. Ramsey and Cougar Den have indeed imported fuel from Oregon, but they transported this fuel from Oregon onto the ceded lands of the Yakama Nation. At no point did Mr. Ramsey's trucks cross into the state of Washington. As such, Mr. Ramsey never imported fuel into the state of Washington within the meaning of the statutes:

- "Import" means to bring motor vehicle fuel *into this state* by a means of conveyance other than the fuel supply tank of a motor vehicle. RCW 82.36.010(10) (emphasis added).
- "Import" means to bring special fuel *into this state* by a means of conveyance other than the fuel supply tank of a motor vehicle. RCW 82.38.020(12) (emphasis added).

Absent any imports into the state of Washington, Chapters 82.36 and 82.38 RCW do not apply, and the Department of Licensing has no basis for imposing any tax.

B. As a Member of the Yakama Nation, Mr. Ramsey Is Immune from a State Fuel Tax.

Even assuming that Mr. Ramsey's trucks crossed onto the state of Washington, the state has no authority to tax Mr. Ramsey. It is settled law that the state has no authority to impose a fuel tax on fuel sold on tribal land:

> We hold that Oklahoma may not apply its motor fuels tax, as currently designed, to fuel sold by the Tribe in Indian country. In so holding, we adhere to settled law: when Congress does not instruct otherwise, a State's

> excise tax is unenforceable if its legal incidence falls on a Tribe or its members for sales made within Indian country.

Oklahoma Tax Com'n v. Chickasaw Nation, 515 U.S. 450, 453, 115 S. Ct. 2214 (1995). Such a tax "conflicts with the traditional scope of Indian sovereign authority." *Id.* at 454. Finally, it is preempted by the federal government, which has "exclusive authority over relations with Indian tribes." *Montana v. Blackfeet Tribe*, 471 U.S. 759, 764, 105 S. Ct. 2399, 85 L. Ed. 2d 753 (1985); *accord* Treaty with the Yakimas, June 9, 1855, 12 Stat. 951; Wash. Const. art. XXVI, § 2 ("Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States . . . .").

The Department's position is indistinguishable from that of Oklahoma in the *Chickasaw Nation* case: it seeks to impose a motor fuel tax on Mr. Ramsey who is in the business of selling fuel on tribal land. Such a tax is unenforceable against Mr. Ramsey and his business, Cougar Den, Inc.

C. Mr. Ramsey Does Not Need a License from the State of Washington to Sell Fuel on Tribal Land.

The Department asserts that Mr. Ramsey "must be properly licensed as an importer to continue importing fuel." But for the same reasons that Mr. Ramsey is not subject to a tax, he is also not subject to any licensing requirement. First, Mr. Ramsey holds an import license with the Yakama Nation into which he imports fuel; as explained above, he has no need for a license from the state of Washington because he does not import fuel into the

state of Washington. Second, the Department's attempt to regulate Mr. Ramsey's business is a violation of tribal sovereign authority and federal preemption. *Chickasaw Nation*, 515 U.S. at 453.

The Department has failed to present any authority for circumventing the long settled sovereignty of the Yakama Nation and the exclusive authority of the federal government. Accordingly, Mr. Ramsey and Cougar Den, Inc. owe no taxes, penalties, or interest.

Sincerely yours,

STOKES LAWRENCE
VELIKANJE MOORE & SHORE

s/ Andre M. Penalver

Andre M. Penalver
Attorney for Mr. Ramsey & Cougar Den, Inc.

cc: Kip Ramsey

STATE OF WASHINGTON
DEPARTMENT OF LICENSING
Prorate and Fuel Tax, Fuel Tax Unit
PO Box 9228 • Olympia, Washington 98507-9228

February 19, 2014

Kip Ramsey
Cougar Den, Incorporated
620 Signal Peak Road
White Swan, Washington 98952

Assessment Number: 760M

Dear Mr. Ramsey:

Importing fuel without a license

We received reports from Oregon Department of Transportation, Fuels Tax Group, showing your company imported fuel to Washington from Oregon in November and December 2013. These imports are subject to Washington taxes under chapters 82.36 and 82.38 of the Revised Code of Washington (RCW). The current amount owing is $1,137,337.68, including tax, penalties, and interest. Please review the following chart for a breakdown of the tax, penalty, and interest owed:

Special Fuel (SF) (RCW 82.38)

2013	Gallons	Tax (RCW 82.38.030)	Penalty (RCW 82.38.170)
November	267,232	$100,212.00	$10,021.20
December	284,713	$106,767.38	$10,676.74

[chart cont'd]

Unlicensed Imports Penalty	Interest (RCW 82.38.170)	Total
Not applicable	$3,340.18	$113,573.38
Not applicable	$2,360.63	$119,804.75
	SF Total	**$233,378.13**

Motor Vehicle Fuel (MF) (RCW 82.36)

2013	Gallons	Tax (RCW 82.36.025)	Penalty (RCW 82.36.040)
November	566,181	$212,317.88	$4,246.36
December	586,407	$219,902.63	$4,398.05

[chart cont'd]

Unlicensed Imports Penalty (RCW 82.36.080)	Interest (RCW 82.36.045)	Total
$212,317.88	$17,414.34	$446,296.45
$219,902.63	$13,459.80	$457,663.10
	MF Total	**$903,959.55**
	Total Assessment	**$1,137,337.68**

What you must do

Within 30 days of the receipt date of this letter, you must either:

- pay this assessment, or
- submit a written appeal or request for reassessment

Payment Instructions

Send payment, via electronic funds transfer to the Department of Licensing. Follow the instructions below to complete your EFT wire or ACH transfer:

Bank Name:	Bank of America
Branch:	Olympia, Washington
Name of Bank Account:	Washington State Treasurer – Concentration Account
Checking Account Number:	105000000604
Telegraphic Abbreviation:	Bank of America
ACH Transit Routing Number:	123308825
Wire Transit Routing Number:	026009593
Comment/Message:	Assessment 756M [*sic*]

After 30 days, an additional 10 percent late payment penalty is added to the taxes due, unless payment is received. On the first of each month, 1 percent interest is applied to the unpaid balance.

Licensing Requirements

Per Washington State law and the 2013 "Fuel Tax Agreement Concerning Taxation of Motor Vehicle Fuel and Special Fuel between the Confederated Tribes and Bands of the Yakama Nation and the State of Washington," Paragraph 4.3b, you must be properly licensed as an importer to continue importing fuel.

Appeal Instructions

If you decide to appeal this assessment, mail your explanation or reason for appeal or reassessment to:

Fuel Tax Section
Department of Licensing
Post Office Box 9228
Olympia, Washington 98507-9228

The procedures that apply to appeals are described in sections 308-72-930 and 308-77-102 of the Washington Administrative Code (WAC). The Revised Code of Washington and the Washington Administrative Code are available online at: http://www.leg.wa.gov/LawsAndAgencyRules/Pages/default.aspx.

If we do not hear from you within 30 days, this assessment becomes final and closed to further appeal.

Questions

Contact Ann Diaz at (360) 664-1853 or email adiaz@dol.wa.gov.

Respectfully,

s/ Paul W. Johnson
Paul W. Johnson
Fuel Tax Manager
Prorate and Fuel Tax Services

cc Thao Manikhoth, Administrator - Prorate and Fuel Tax Services
Compliance Unit
Fuel Tax Unit

Enclosures

STATE OF WASHINGTON
DEPARTMENT OF LICENSING
Prorate and Fuel Tax, Fuel Tax Unit
PO Box 9228 • Olympia, Washington 98507-9228

April 1, 2014

Kip Ramsey
Cougar Den, Incorporated
620 Signal Peak Road
White Swan, Washington 98952

Assessment Number: 761M

Dear Mr. Ramsey:

Importing fuel without a license

We received reports from Oregon Department of Transportation, Fuels Tax Group, showing your company imported fuel to Washington from Oregon in January and February 2014. These imports are subject to Washington taxes under chapters 82.36 and 82.38 of the Revised Code of Washington (RCW). The current amount owing is $1,129,701.25, including tax, penalties, and interest. Please review the following chart for a breakdown of the tax, penalty, and interest owed:

Special Fuel (SF) (RCW 82.38)

2014	Gallons	Tax	Penalty
January	315,640	$118,365.00	$11,836.50
February	271,946	$101,979.75	$10,197.98

[chart cont'd]

Unlicensed Imports Penalty	Interest	Total
Not applicable	$3,945.25	$134,146.75
Not applicable	$2,254.78	$114,432.51
	SF Total	**$248,579.26**

Motor Fuel (MF) (RCW 82.36)

2014	Gallons	Tax	Penalty
January	617,986	$231,744.75	$4,634.90
February	504,822	$189,308.25	$3,786.17

[chart cont'd]

Unlicensed Imports Penalty	Interest	Total
$231,744.75	$19,007.73	$487,132.13
$189,308.25	$11,587.19	$393,989.86
	MF Total	**$881,121.99**
	Total Assessment	**$1,129,701.25**

What you must do

Within 30 days of the receipt date of this letter, you must either:

- pay this assessment, or
- submit a written appeal or request for reassessment

Payment Instructions

Send payment, via electronic funds transfer to the Department of Licensing. Follow the instructions below to complete your EFT wire or ACH transfer:

Bank Name:	Bank of America
Branch:	Olympia, Washington
Name of Bank Account:	Washington State Treasurer – Concentration Account
Checking Account Number:	105000000604
Telegraphic Abbreviation:	Bank of America
ACH Transit Routing Number:	123308825
Wire Transit Routing Number:	026009593
Comment/Message:	Assessment 756M [*sic*]

After 30 days, an additional 10 percent late payment penalty is added to the taxes due, unless payment is received. On the first of each month, 1 percent interest is applied to the unpaid balance.

Licensing Requirements

Per Washington State law and the 2013 "Fuel Tax Agreement Concerning Taxation of Motor Vehicle Fuel and Special Fuel between the Confederated Tribes and Bands of the Yakama Nation and the State of Washington," Paragraph 4.3b, you must be properly licensed as an importer to continue importing fuel.

Appeal Instructions

If you decide to appeal this assessment, mail your explanation or reason for appeal or reassessment to:

Fuel Tax Section
Department of Licensing
Post Office Box 9228
Olympia, Washington 98507-9228

The procedures that apply to appeals are described in sections 308-72-930 and 308-77-102 of the Washington Administrative Code (WAC). The Revised Code of Washington and the Washington Administrative Code are available online at: http://www.leg.wa.gov/LawsAndAgencyRules/Pages/default.aspx.

If we do not hear from you within 30 days, this assessment becomes final and closed to further appeal.

Questions

Contact Ann Diaz at (360) 664-1853 or email adiaz@dol.wa.gov.

Respectfully,

s/ Paul W. Johnson
Paul W. Johnson
Fuel Tax Manager
Prorate and Fuel Tax Services

cc Thao Manikhoth, Administrator - Prorate and Fuel Tax Services
Compliance Unit
Fuel Tax Unit

Enclosures

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF LICENSING

In re the Matter of Fuel Tax or Prorate Assessment Issued to, COUGAR DEN, INC., Respondent.	Case No.: 2014-DOL-0006 Agency No. 756M DECLARATION OF KIP RAMSEY III

I, Kip Ramsey III, am over the age of 18, have personal knowledge of all the facts stated herein and declare as follows:

1. I am the Chief Operating Officer for Ramsey Companies, which includes Cougar Den, Inc., the Respondent in this case.

2. Cougar Den, Inc. was established in 1992 as a way to provide fuel to members of the Yakama Nation. Its business is to distribute fuel and to operate a restaurant, also called Cougar Den, located at 620 Signal Peak Rd., White Swan.

3. Around March 20, 2013, Cougar Den began importing from Oregon in keeping with its role as an agent of the Yakama Nation for the purpose of procuring petroleum products. Cougar Den hauls the fuel from Oregon across Biggs Junction to the Yakama Reservation, staying at all times in Oregon, the Ceded Area of the Yakama Nation, or the Reservation itself.

4. Each month, Cougar Den has reported all its gallons of Oregon fuel with the Oregon Department of Transportation.

5. In order to transport the fuel from Oregon, Cougar Den uses its own trucks. It has also contracted with KAG West to carry the fuel in KAG West's trucks at Cougar Den's direction and as Cougar Den's agent.

6. It is important to Cougar Den that we distribute fuel to members of the Yakama Nation only. For that reason, when Cougar Den sells fuel to a business, its invoice includes the enrollment number of the individual who owns the business. I have attached true and correct copies of examples of such invoices. As described in the invoices, federal and tribal taxes are paid on each sale.

7. Sometime around December 9, 2013, Cougar Den received Assessment 756M for taxes, penalties, and interest that the State of Washington claimed was owing. This was the first notice that the State of Washington had sent to Cougar Den for any importation taxes or licensing requirements for Cougar Den's Oregon fuel.

8. As a member of the Yakama Nation, I am a member of the General Council of the Yakama Nation. The General Council includes all enrolled adult members of the Yakama Nation.

9. On March 13, 2014, I was present when the General Council considered and rejected the 2013 Fuel Tax Agreement between the Yakama Nation and the State of Washington. The General Council has not yet prepared a written resolution reflecting that vote, but such a written resolution is forthcoming.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at White Swan, Yakama Nation Reservation, this *7th* day of April, 2014.

s/ Kip Ramsey III
Kip Ramsey III

ATTACHMENT A

INVOICE

Cougar Den, Inc.
620 Signal Peak Rd.
PO BOX 669
White Swan, WA 98952
(509) 874-2090

Invoice Number: 0002472-IN
Invoice Date: 4/28/2013
Salesperson:
Tax Schedule:

Delbert Wheeler
Yakama Enrollment # 5777
2421 W Wapato Rd.
Wapato, WA 98951

Customer Number: 00-KK
Customer P.O.: 4/28 PM
Ship VIA:
Terms: NO TERMS

Contact:

Item Code	Description	UM	Quantity	Price	Amount
0 Unlead	All others		11,308.000	2.895	32,736.66
0 Federal Taxes and Fees	All others		11,308.000	0.186	2,103.29
0 Tribal Taxes	All others		11,308.000	0.055	621.94
0 Delivery	All others		11,308.000	0.095	1,074.26

Net Invoice:	36,536.15
Freight:	0.00
Sales Tax:	0.00
Invoice Total:	36,536.15

INVOICE

Cougar Den, Inc.
620 Signal Peak Rd.
PO BOX 669
White Swan, WA 98952
(509) 874-2090

Invoice Number: 0002518-IN
Invoice Date: 6/15/2013
Salesperson:
Tax Schedule:

Kip Ramsey III
Yakama Enrollment 10825
61 W Wapato Rd.
Wapato, WA 98951

Customer Number: 76-WOLFDEN
Customer P.O.: 6/15 Delivery
Ship VIA:
Terms: NO TERMS

Contact:

Item Code	Description	UM	Quantity	Price	Amount
0 Unleaded	All others		6,400.000	2.941	18,822.40
0 Diesel	All others		3,999.000	2.996	11,981.00
0 Federal Diesel Tax	All others		3,999.000	0.246	983.75
0 Federal Unleaded Tax	All others		6,400.000	0.186	1,190.40
0 Tribal Tax	All others		10,399.000	0.055	571.95
0 Unleaded Delivery Fee	All others		6,400.000	0.096	614.40
0 Diesel Delivery Fee	All others		3,999.000	0.106	423.89

Net Invoice:	34,587.79
Freight:	0.00
Sales Tax:	0.00
Invoice Total:	34,587.79

INVOICE

Cougar Den, Inc.
620 Signal Peak Rd.
PO BOX 669
White Swan, WA 98952
(509) 874-2090

Invoice Number: 0002615-IN
Invoice Date: 7/13/2013
Salesperson:
Tax Schedule:

Kip Ramsey III
Yakama Enrollment 10825
61 W. Wapato Rd.
Wapato, WA 98951

Customer Number: 76-WOLFDEN
Customer P.O.: 7/13 Delivery
Ship VIA:
Terms: NO TERMS

Contact:

Item Code	Description	UM	Quantity	Price	Amount
0 Unleaded	All others		6,004.000	3.158	18,960.63
0 Diesel	All others		2,899.000	3.042	8,818.76
0 Federal Diesel Tax	All others		2,899.000	0.246	713.15
0 Federal Unleaded Tax	All others		6,004.000	0.186	1,116.74
0 Tribal Tax	All others		8,903.000	0.055	489.67
0 Diesel Delivery Fee	All others		2,899.000	0.106	307.29
0 Unleaded Delivery Fee	All others		6,004.000	0.096	576.38

Net Invoice:	30,982.62
Freight:	0.00
Sales Tax:	0.00
Invoice Total:	30,982.62

INVOICE

Cougar Den, Inc.
620 Signal Peak Rd.
PO BOX 669
White Swan, WA 98952
(509) 874-2090

Invoice Number: 0002675-IN
Invoice Date: 8/6/2013
Salesperson:
Tax Schedule:

Kip Ramsey
Yakama Enrollment 2161
PO Box 458
61 Medicine Valley Rd.
White Swan, WA 98952

Contact: Kip Ramsey

Customer Number: 75-TIINMAF
Customer P.O.: 8/5 Delivery
Ship VIA:
Terms: Net 30

Item Code	Description	UM	Quantity	Price	Amount
0 B5 bio diesel	All others		6,201.000	3.090	19,161.09
0 Dyed B5 bio diesel	All others		3,500.000	3.095	10,832.50
0 Federal diesel tax	All others		6,200.000	0.246	1,525.20
0 Federal diesel tax	All others		3,500.000	0.003	10.50
0 Tribal Tax	All others		9,701.000	0.055	533.56
0 Delivery Fee	All others		9,701.000	0.112	1,086.51

Net Invoice:	33,149.36
Freight:	0.00
Sales Tax:	0.00
Invoice Total:	33,149.36

INVOICE

Cougar Den, Inc.
620 Signal Peak Rd.
PO BOX 669
White Swan, WA 98952
(509) 874-2090

Invoice Number: 0002784-IN
Invoice Date: 9/10/2013
Salesperson:
Tax Schedule:

Delbert Wheeler
Yakama Enrollment # 5777
2421 W Wapato Rd.
Wapato, WA 98951

Customer Number: 00-KK
Customer P.O.: 9/10 Delivery
Ship VIA:
Terms: NO TERMS

Contact:

Item Code	Description	UM	Quantity	Price	Amount
0 Unleaded	All others		9,822.000	2.910	28,582.02
0 Premium	All others		1,605.000	3.190	5,119.95
0 Federal tax	All others		11,427.000	0.186	2,125.42
0 Tribal tax	All others		11,427.000	0.055	628.49
0 Delivery Fee	All others		11,427.000	0.096	1,096.99

Net Invoice:	37,552.87
Freight:	0.00
Sales Tax:	0.00
Invoice Total:	37,552.87

INVOICE

Cougar Den, Inc.
620 Signal Peak Rd.
PO BOX 669
White Swan, WA 98952
(509) 874-2090

Invoice Number: 0002942-IN
Invoice Date: 10/24/2013
Salesperson:
Tax Schedule:

Kip Ramsey
Yakama Enrollment 2161
PO Box 458
61 Medicine Valley Rd.
White Swan, WA 98952

Contact: Kip Ramsey

Customer Number: 75-TIINMAF
Customer P.O.: 10/24 Delivery
Ship VIA:
Terms: Net 30

Item Code	Description	UM	Quantity	Price	Amount
0 Diesel	All others		5,500.000	3.073	16,901.50
0 Dyed Diesels	All others		4,000.000	3.078	12,312.00
0 Federal diesel tax	All others		5,500.000	0.246	1,353.00
0 Federal dyed diesel tax	All others		4,000.000	0.003	12.00
0 Tribal tax	All others		9,500.000	0.055	522.50
0 Diesel Delivery fee	All others		9,500.000	0.112	1,064.00

Net Invoice:	32,165.00
Freight:	0.00
Sales Tax:	0.00
Invoice Total:	32,165.00

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR DEPARTMENT OF LICENSING

In the Matter of the Fuel Tax Assessment Issued to: COUGAR DEN, INC., Respondent.	OAH Docket No. 214-DOL-0006 Fuel Tax Asses. No. 756M DECLARATION OF PAUL W. JOHNSON

I, PAUL W. JOHNSON, declare as follows:

1. I am employed by the Washington Department of Licensing (DOL) as a Washington Management Services (WMS) Manager in the Prorate and Fuel Tax Section, Business and Professions Division. I have held that position for fourteen years. In that position, I managed an audit section for five years, and I have managed a fuel tax section for seven years. Since about 2005, my responsibilities have included management of DOL's fuel tax agreements with Indian Tribes. Before I was hired by the Washington Department of Licensing, I held auditor and supervisor positions in the Fuel Tax Audit Section at the Idaho State Tax Commission for over nine years.

2. In my capacity as the Fuel Tax Manager, I work with government officials who are responsible for enforcement of motor fuel tax laws in other states. For example, I work with officials from the Oregon Department of Transportation-Fuels Tax Group. As permitted by law, we cooperate and share information to facilitate the enforcement of our respective states' motor fuel tax laws. The documents that have been

submitted in this matter as Stipulated Exhibit 5 are copies of documents that I received from Jim Bodenhamer of the Oregon Department of Transportation-Fuels Tax Group.

3. Under the 2013 Fuel Tax Agreement between the Yakama Nation and the State of Washington, and under a prior federal court Consent Decree between the Yakama Nation and the State, the Yakama Nation informed the Department of Licensing which businesses held tribal permits to operate retail gas stations within the Yakama Reservation. The Yakama Nation provided copies of the permits to the Prorate and Fuel Tax Section of DOL. Attached as Exhibit 1 are copies of all of the Yakama Nation Petroleum Permits that the Yakama Nation sent to the Prorate and Fuel Tax Section between November 2012 and November 2013. The Yakama Nation also provided information about the names and addresses of the businesses that held these permits, as follows:

NAME	ADDRESS
Cougar Den	620 Signal Peak Road White Swan, WA
Kiles Korner	2421 West Wapato Road Wapato, WA
Lillies Corner	50 West Wapato Road Wapato, WA
Mountain Inn	105 East Main Street Glenwood, WA

Topp Mart	907 West First Avenue Toppenish, WA
Topp Stop	321 Elm Street Toppenish, WA
White Swan Trading Post	180 Birch Street White Swan, WA
Wolf Den	61 West Wapato Road Wapato, WA
Yakamart	111 Fort Road Toppenish, WA

4. The gas stations that hold Yakama Nation Petroleum Permits are not the only gas stations within the Yakama Reservation. There are other gas stations in Toppenish and Wapato.

5. Under the old Consent Decree between the Yakama Nation and the State, Washington-licensed fuel suppliers could obtain a partial refund of the state fuel tax they had paid on fuel they sold to fuel retailers that held Yakama Nation Petroleum Permits. The suppliers submitted refund claims documenting those sales to the Prorate and Fuel Tax Section, and DOL paid refunds based on the information on the forms. DOL stopped providing such refunds to fuel suppliers when the 2013 Fuel Tax Agreement between the Yakama Nation and the State of Washington took effect on November 22, 2013.

6. I used the refund claim forms that Washington-licensed fuel distributors and fuel tax returns used by licensed suppliers submitted to DOL

in 2013 to prepare the tables attached as Exhibit 2. Table A shows the sales to the Yakamart that WSCO Petroleum Corporation reported for the period of March through October 2013. WSCO Petroleum holds a Washington Motor Vehicle Fuel Distributor license and a Washington Special Fuel Distributor license. Table B shows the sales to Cougar Den, Wolf Den, and Kiles Korner that R.E. Powell and IPC (USA) Inc. reported for the 2013 calendar year. Table B also shows the sales to Cougar Den, Wolf Den, and Kiles Korner that Cougar Den reported to the Oregon Department of Transportation in the reports I received from the Oregon Department of Transportation for the same period. R.E. Powell holds a Washington Motor Vehicle Fuel Supplier license and a Washington Special Fuel Supplier license. IPC (USA) Inc. holds a Washington Motor Vehicle Fuel Supplier license and a Washington Special Fuel Supplier license. The Schedules of Disbursements that I received from the Oregon Department of Transportation for August 2013 appear to be incomplete, so I estimated the amount of fuel that Cougar Den sold to Wolf Den and Kiles Korner for that month.

7. The fuel terminal "racks" that are closest to the Yakama Reservation are located in Pasco, Washington.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this *24* day of April, 2014 at Olympia, Washington.

s/ Paul W. Johnson
Paul W. Johnson

In re Cougar Den, Inc.
OAH Docket No. 2014-DOL-0006
Fuel Tax Assessment No. 756M

Declaration of Paul W. Johnson

Exhibit 1

Yakama Nation Petroleum Permits
Provided to Washington Department of Licensing
Prorate and Fuel Tax Section
between November 2012 and November 2013

YAKAMA NATION
TOPPENISH, WA
PETROLEUM PERMIT
NON-TRANSFERABLE

This is to certify that Cougar Den, Inc.

Is granted the privilege of selling/utilizing/using petroleum on the trust property described within,

Provided that compliance is maintained with the laws of the YAKAMA NATION

Including,
YAKAMA NATION COUNCIL RESOLUTIONS
T-144-88 & T-38-89.
Petroleum Permit is valid from
December 02, 2012 to December 02, 2013

s/ Virgil Lewis
YAKAMA TRIBAL COUNCIL
LAW & ORDER COMMITTEE
CHAIR OR MEMBER

License No. YNP 10-12 Kip Ramsey

YAKAMA NATION
TOPPENISH, WA
PETROLEUM PERMIT
NON-TRANSFERABLE

This is to certify that Kiles Korner

Is granted the privilege of selling/utilizing/using petroleum on the trust property described within,

Provided that compliance is maintained with the laws of the YAKAMA NATION

Including,
YAKAMA NATION COUNCIL RESOLUTIONS
T-144-88 & T-38-89.
Petroleum Permit is valid from
December 14, 2012 to December 14, 2013

s/ Richard George
YAKAMA TRIBAL COUNCIL
LAW & ORDER COMMITTEE
CHAIR OR MEMBER

License No. YNP 12-12 Delbert Wheeler Sr.

YAKAMA NATION
TOPPENISH, WA
PETROLEUM PERMIT
NON-TRANSFERABLE

This is to certify that Da Store @ Lillies Corner

Is granted the privilege of utilizing/using petroleum on the trust property described within,

Provided that compliance is maintained with the laws of the YAKAMA NATION

Including,
YAKAMA NATION COUNCIL RESOLUTIONS
T-144-88 & T-38-89.
Petroleum Permit is valid from
November 28, 2012 to November 28, 2013

s/ Gerald Læwis
YAKAMA TRIBAL COUNCIL
LAW & ORDER COMMITTEE
CHAIR OR MEMBER

License No. YNP 08-12 Theresa & E. Arlen Washines

YAKAMA NATION
TOPPENISH, WA
PETROLEUM PERMIT
NON-TRANSFERABLE

This is to certify that Mountain Inn, LLC

Is granted the privilege of selling/utilizing/using petroleum on the trust property described within,

Provided that compliance is maintained with the laws of the YAKAMA NATION

Including,
YAKAMA NATION COUNCIL RESOLUTIONS
T-144-88 & T-38-89.
Petroleum Permit is valid from
November 17, 2012 to November 17, 2013

s/ Virgil Lewis
YAKAMA TRIBAL COUNCIL
LAW & ORDER COMMITTEE
CHAIR OR MEMBER

License No. YNP 11-12 Billie & Shane Patterson

YAKAMA NATION
TOPPENISH, WA
PETROLEUM PERMIT
NON-TRANSFERABLE

This is to certify that Grey Poplars Inc. DBA
Toppmart Chevron

Is granted the privilege of selling/utilizing/using
petroleum on the trust property described within,

Provided that compliance is maintained with the
laws of the YAKAMA NATION

Including,
YAKAMA NATION COUNCIL RESOLUTIONS
T-144-88 & T-38-89.
Petroleum Permit is valid from
July 23, 2013 to July 23, 2014

s/ Gerald Lewis
YAKAMA TRIBAL COUNCIL
LAW & ORDER COMMITTEE
CHAIR OR MEMBER

License No. YNP 06-13 Ty Young

YAKAMA NATION
TOPPENISH, WA
PETROLEUM PERMIT
NON-TRANSFERABLE

This is to certify that Grey Poplars Inc. DBA
Toppstop Texaco

Is granted the privilege of selling/utilizing/using
petroleum on the trust property described within,

Provided that compliance is maintained with the
laws of the YAKAMA NATION

Including,
YAKAMA NATION COUNCIL RESOLUTIONS
T-144-88 & T-38-89.
Petroleum Permit is valid from
July 23, 2013 to July 23, 2014

s/ Gerald Lewis
YAKAMA TRIBAL COUNCIL
LAW & ORDER COMMITTEE
CHAIR OR MEMBER

License No. YNP 05-13 Ty Young

YAKAMA NATION
TOPPENISH, WA
PETROLEUM PERMIT
NON-TRANSFERABLE

This is to certify that Grey Poplars Inc. DBA
White Swan Trading Post

Is granted the privilege of selling/utilizing/using
petroleum on the trust property described within,

Provided that compliance is maintained with the
laws of the YAKAMA NATION

Including,
YAKAMA NATION COUNCIL RESOLUTIONS
T-144-88 & T-38-89.
Petroleum Permit is valid from
July 23, 2013 to July 23, 2014

s/ Gerald Lewis
YAKAMA TRIBAL COUNCIL
LAW & ORDER COMMITTEE
CHAIR OR MEMBER

License No. YNP 07-13 Ty Young

YAKAMA NATION
TOPPENISH, WA
PETROLEUM PERMIT
NON-TRANSFERABLE

This is to certify that Lupine Inc. DBA Wolf Den

Is granted the privilege of selling/utilizing/using petroleum on the trust property described within,

Provided that compliance is maintained with the laws of the YAKAMA NATION

Including,
YAKAMA NATION COUNCIL RESOLUTIONS
T-144-88 & T-38-89.
Petroleum Permit is valid from
December 02, 2012 to December 02, 2013

s/ Virgil Lewis
YAKAMA TRIBAL COUNCIL
LAW & ORDER COMMITTEE
CHAIR OR MEMBER

License No. YNP 09-12 Dacie Ramsey

YAKAMA NATION
TOPPENISH, WA
PETROLEUM PERMIT
NON-TRANSFERABLE

This is to certify that Yakamart

Is granted the privilege of selling/utilizing/using petroleum on the trust property described within,

Provided that compliance is maintained with the laws of the YAKAMA NATION

Including,
YAKAMA NATION COUNCIL RESOLUTIONS
T-144-88 & T-38-89.
Petroleum Permit is valid from
May 21, 2013 to May 21, 2014

s/ Virgil Lewis
YAKAMA TRIBAL COUNCIL
LAW & ORDER COMMITTEE
CHAIR OR MEMBER

License No. YNP 04-13 Yakama Nation

LICENSING

TABLE A

Prorate and Fuel Tax

Fuel Deliveries to Yakamart

March 1, thru October 31, 2013

	Gallons		
2013	**Gas**	**Diesel**	**Total Gallons**
MAR	227,213	139,812	367,025
APR	220,821	148,695	369,516
MAY	183,612	141,224	324,836
JUN	257,625	137,428	395,053
JUL	245,731	119,428	365,159
AUG	303,626	123,145	426,771
SEP	239,829	140,721	380,550
OCT	342,837	179,837	522,674
Totals	**2,021,294**	**1,130,290**	**3,151,584**

Source: WSCO - Licensed Distributor Refund Claim Forms

Gallons subject to change per amended information

Effective date 4/14/14

dL LICENSING

TABLE B

Prorate and Fuel Tax
Fuel Deliveries
January 1, thru December 31, 2013

Motor Fuel Gallons Fuel Purchases:

	Cougar Den (Owner - Kip Ramsey)				Wolf Den (Owner - Kip Ramsey)		
2013	RE Powell	Oregon Imports	IPC (USA) Inc.	Total Gallons	RE Powell	Oregon Imports	Total Gallons
Jan	26,501			26,501	290,793		290,793
Feb	38,196			38,196	304,939		304,939
Mar	15,735	18,501		34,236	317,368		317,368
Apr		Per Tax Ret:	11,104	11,104	32,902		32,902
		Per OR rtn:	60,219	60,219			-
		38,212		38,212		229,776	229,776
May		19,902		19,902		177,941	177,941
Jun		34,515		34,515		316,980	316,980
Jul		35,511		35,511		309,643	309,643
Aug		34,131		34,131		420,447	420,447
Sep		37,013		37,013		318,994	318,994
Oct		39,175		39,175		345,772	345,772
Nov		36,711		36,711		340,149	340,149
Dec		44,214		44,214		349,989	349,989
Totals	80,432	337,885	71,323	489,640	946,002	2,809,691	3,755,693

Kiles Korner (Owner - Delbert Wheeler)			Total Gallons
RE Powell	Oregon Imports	Total Gallons	
156,187		156,187	473,481
134,956		134,956	478,091
169,109		169,109	520,713
101,001		101,001	364,418
	36,211	36,211	
22,796	122,809	145,605	343,448
	178,258	178,258	529,753
	192,393	192,393	537,547
	147,558	147,558	602,136
	184,509	184,509	540,516
	209,517	209,517	594,464
	189,321	189,321	566,181
	192,204	192,204	586,407
584,049	1,452,780	2,036,829	6,282,162

August 2013 Gallons Received by
Wolf Den and Kiles Korner Estimated

TABLE B cont'd

Special Fuel Gallons Fuel Purchases:

	Cougar Den (Owner - Kip Ramsey)				Wolf Den (Owner - Kip Ramsey)		
2013	RE Powell	Oregon Imports	IPC (USA) Inc.	Total Gallons	RE Powell	Oregon Imports	Total Gallons
Jan	5,201			5,201	185,174		185,174
Feb	9,008			9,008	164,484		164,484
Mar		3,501		3,501	221,581	19,656	241,237
Apr		5,602	11,104	16,706		157,742	157,742
May	1,850	2,200		4,050		173,408	173,408
Jun		8,099		8,099		254,173	254,173
Jul		8,001		8,001		218,190	218,190
Aug		8,301		8,301		267,576	267,576
Sep		12,120		12,120		255,142	255,142
Oct		15,900		15,900		248,301	248,301
Nov		6,999		6,999		192,009	192,009
Dec		6,301		6,301		220,207	220,207
Totals	16,059	77,024	11,104	104,187	571,239	2,006,404	2,577,643

Kiles Korner (Owner - Delbert Wheeler)			Total Gallons
RE Powell	Oregon Imports	Total Gallons	
88,651		88,651	279,026
39,862		39,862	213,354
39,004		39,004	283,742
		-	174,448
	20,053	20,053	197,511
	49,551	49,551	311,823
	49,105	49,105	275,296
	44,792	44,792	320,669
	74,012	74,012	341,274
	68,303	68,303	332,504
	48,808	48,808	247,816
	48,504	48,504	275,012
167,517	403,128	570,645	3,252,475

August 2013 Gallons Received by Wolf Den and Kiles Korner Estimated

Total 2013 Fuel Purchases:	Motor Fuel	6,282,162
	Special Fuel	3,252,475
	Motor & Special Fuel	9,534,637

Sources: Fuel Tax Licensee Tax Returns
Cougar Den Oregon Export Returns

Gallons subject to change per amended information

Excerpted from Agency Record at 215-59

(Excerpt from Cases Attached to Respondent's Motion for Summary Judgment, *Yakama Indian Nation v. Flores*, 955 F. Supp. 1229, 1261-67 (1997))

* * * * *

[Agency Record 216]

United States District Court,
E.D. Washington.

YAKAMA INDIAN NATION, Plaintiff/Intervenors,
v.
Juan FLORES, et al., Defendants.
Ronald CREE, Jr., et al., Plaintiffs,
v.
Juan FLORES, et al., Defendants.
WHEELER LOGGING, Plaintiff,
v.
Annette SANDBERG, et al., Defendants,
v.
Federico PENA, United States Secretary of Transportation, Third Party Defendant.

Nos. CS-89-458-AAM, CY-92-3100-AAM.
Feb. 12, 1997.

* * * * *

[Agency Record 251]

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

1. Since 1915, Washington has required registration and licensing of trucks according to gross weight, with higher weights bearing higher licensing

fees. RCW §§ 46.16.070, 46.16.135. Trucks owned by individual Indians have never been exempt from such license fees.

2. Washington requires log tolerance permits for certain overweight trucks with payment of an accompanying fee. RCW §§ 46.44.047, 46.44.095. Individual Indians have never been exempt from such fees.

3. Washington law establishes traffic infractions for violations of the weight licensing requirements, and impose penalties for such violations. RCW §§ 46.16.010, 46.16.135, 46.16.140, 46.16.145. Fees paid to the State of Washington for truck registration, licensing, and log tolerance permits are credited to the state motor fund and used primarily for highway purposes. RCW §§ 46.68.030, 46.68.035.

4. Plaintiff-Intervenor Yakama Nation sells timber from lands held in trust by the United States for the benefit of the Yakama Nation and its members. Under the supervision of the Bureau of Indian Affairs, the Yakama Nation enters into timber sales contracts with purchasers. When possible, purchasers of tribal timber must employ tribal members. Ramsey testimony.

5. Plaintiff Richard "Kip" Ramsey, d/b/a Tiin-Ma Logging, and Delbert Wheeler, d/b/a Wheeler Logging, own logging trucks. Both Mr. Ramsey and Mr. Wheeler are enrolled Yakama Indians. Employed by purchasers of tribal timber, their companies haul timber for the purchasers to various sites designated by the purchasers. Some sites to which the timber is delivered is outside of reservation boundaries. When

they haul timber, Tiin-Ma and Wheeler trucks operate on public highways at gross weights exceeding 55,000 pounds. P–54; Ramsey testimony.

6. While Ramsey and Wheeler principally haul tribal timber to the Boise Cascade mill in Yakima, they also haul timber to mills on the Columbia River, in Packwood, Washington, and occasionally to mills in the State of Oregon. Drivers for Ramsey and Wheeler travel on roads within the reservation the majority of the time.

7. Both Ramsey and Wheeler engage in hauling logs at all times of the year when weather permits.

8. Defendants are the Chief of the Washington State Patrol (WSP) and Commercial Vehicle Enforcement Officers of the WSP authorized to enforce vehicle licensing laws and other state laws pertaining to highway use.

9. Defendant officers issued traffic citations to Tiin-Ma and Wheeler Logging drivers because Kip Ramsey and Delbert Wheeler neither paid applicable tonnage licensing fees nor obtained log tolerance permits for their trucks. Recently, defendant officers began issuing citations

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to Tiin-Ma and Wheeler drivers for the failure to possess proper registration. All of the state enforcement actions challenged in this case happened outside the boundaries of the Yakama Indian Reservation.

10. Under the laws of the State of Washington Yakama tribal members could not license their

vehicles without paying the State registration and licensing fees. Testimony of Kip Ramsey; P–54.

11. Kip Ramsey and Wheeler Logging Company cannot license their logging trucks or secure tonnage and log tolerance permits without payment of State licensing, registration and tonnage fees. Testimony of Kip Ramsey; P–54.

12. Since the inception of State laws requiring vehicle licenses and fees, the State has enforced those laws by citing Yakama Indian vehicle owners who do not license or register their vehicles.

13. The State of Washington no longer cites Yakama Tribal members for traffic infractions inside reservation boundaries. This exemption includes vehicles which are neither licensed or registered by the State.

14. Criminal and "infraction" enforcement of licensing and registration laws of the State of Washington prevent the *Cree* and *Wheeler* plaintiffs herein from obtaining licenses, registrations, and tonnage permits for their trucks without first paying state licensing, and tonnage fees. Testimony of Kip Ramsey; P–54.

15. Plaintiffs Cree and Wheeler have been subjected to significant fines by the defendants because plaintiffs have not purchased licenses and tonnage permits in compliance with the laws of the State. *See* P–9. Plaintiffs, including the Yakama Nation, contend that the Treaty With the Yakamas of 1855 precludes the state from imposing licensing and tonnage fees against Indian–owned trucks hauling tribal goods to market.

16. *Cree* plaintiffs and Wheeler Logging, including Kip Ramsey and Delbert Wheeler, intend to comply with all State laws designed to "conserve" the public highways and agree to register their trucks with the State of Washington for identification purposes. Ct. Rec. 294.

17. On June 9, 1855, the United States and fourteen Indian tribes and bands entered into a treaty, the Treaty With the Yakamas (Treaty), 12 Stat. 951 (June 9, 1855, ratified March 8, 1859, proclaimed April 18, 1959). P–1.

18. Article III, paragraph 1 of the Treaty With the Yakamas provides:

> *And provided*, That, if necessary for the public convenience, roads may be run through the said reservation; and on the other hand, the right of way, with free access from the same to the nearest public highway, is secured to them; as also the right, in common with the citizens of the United States, to travel upon all public highways.

19. The Yakamas view the Treaty as a sacred document and place special significance to each part of the Treaty as it provides them with basic rights. Yallup testimony at pp. 9–10; Walker testimony at p. 12.

20. The Treaty With the Yakamas must be construed as the Yakamas would have naturally understood the language, with ambiguous phrases construed in their favor. If the Treaty language is unambiguous, it must be construed in accordance

with its plain language, notwithstanding subsequent actions of the parties.

21. Article III, paragraph 1, of the Treaty With the Yakamas, when viewed in its historical context, unambiguously reserves to the Yakamas the right to travel the public highways without restriction.

22. Article III, paragraph 1 of the Treaty provides the Yakama Indian Nation with the right to travel on all public highways without being subject to any licensing and permitting fees related to the exercise of that right while en-

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gaged in the transportation of tribal goods.

23. Prior to and at the time the treaty was negotiated, the bands comprising the Yakama Nation engaged in a system of trade and exchange with other plateau tribes as well as with more distant tribes of the Northwest coast and plains of Montana and Wyoming. The Yakamas traveled south to the Willamette Valley and possibly California for trading purposes. The Yakamas also traveled to fish on the Columbia River and its tributaries, to hunt at the "buffalo grounds" and in other regions of the Northwest, and to gather roots and berries in the mountains. P–5; P–14, D–218; P–15, D–344; P–17, D–335; P–21, D–329; Walker testimony at pp. 13–18; Richards testimony at p. 12.

24. The Yakama system of trade and exchange was necessary to obtain goods that were otherwise unavailable to them but important for sustenance and religious purposes, such as buffalo byproducts and

shellfish. Yallup testimony at pp. 12–15, 21–22; Walker testimony at p. 16. Items Yakamas traded included fir trees, lava rocks, horses, and various species of salmon. Yallup testimony at pp. 12–15.

25. The Yakamas also traded with non-Indians, particularly the Hudson's Bay Company, to obtain other goods. P–6–8; P–14, D–218. Walker testimony at 13–18.

26. Bands comprising Yakamas, particularly Klickitats, were well-known for their inherent trading ability. P–14, D–218; P–15, D–344; Walker testimony at p. 16.

27. Travel to other regions was essential for the maintenance of the Yakama way of life. Travel enabled the Yakamas to fish, hunt, gather, trade, and maintain intermarriage cultural ties. The Yakama also obtained fish and other aquatic resources, large and small game, decorative objects, buffalo products, and other items essential to their religious practices and ultimately their survival. P–14, D–218; Yallup testimony at p. 22–24. Walker testimony at pp. 13–14, 17.

28. Subsistence activities of the Yakamas required regular, extensive travel throughout the Plateau and in the neighboring Plains. The Yakamas joined with eastern groups, such as the Nez Perce and Flathead, to journey into the Plains to hunt bison and to trade. Further, the Yakamas traveled to the mountains for hunting, berry and root-gathering. P–14, D–218; P–15, D–344; Walker testimony at p. 17.

29. Travel was especially important to the Yakamas to pursue their fishing practices. The

Yakamas maintained fisheries on the Columbia River and followed salmon runs as they moved through Yakama territory. Fish was, and is, a dominant staple of Yakama life for sustenance, religious, trade, and medicinal purposes. Yallup testimony at pp. 10–12; Walker testimony at pp. 17–20; P–14, D–218.

30. The Yakamas enjoyed free and open access to trade networks in order to maintain their system of trade and exchange. Walker testimony at pp. 13–18; Yallup testimony at p. 22.

31. Prior to the negotiations of the Treaty, Governor Stevens and his subordinates were aware that the Yakamas traded both on the Pacific Coast and traveled to the Columbia River to fish and to the plains to hunt buffalo. They were also aware of the importance of travel and trade to the Yakamas and their way of life. P–2; P–14, D–218; P–15, D–344; Walker testimony at p. 22.

32. At the time of the Treaty the United States did not charge fees for travel on its public highways in the Washington Territory.

33. Yakamas' contact with whites prior to the Treaty resulted in native use of horses and firearms, which had changed their traditional tribal practices with respect to travel and hunting. Richards testimony at p. 9.

34. Yakamas' contact with whites prior to the Treaty was limited to explorers, traders, Catholic missionaries,

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and perhaps some settlers, although few had settled in the Yakima Valley prior to the Treaty

negotiations. Richards testimony at 12–16; P–14, D–218.

35. At the time of Treaty negotiations, Isaac. I. Stevens was the Territorial Governor of the Washington Territory, Superintendent of Indian Affairs for the Washington Territory, and Chief Engineer of the Northern Division of the Pacific Railroad Surveys chartered by Congress to explore the possibility of a transcontinental railroad route. Richards testimony at pp. 23–24; P–14, D–218.

36. Stevens was pressured to quickly negotiate treaties with Eastern Washington tribes in order to free land for settlement and road-building purposes. The Oregon Donation Act, allowing for settlement without extinguishment of Indian title to land, increased the urgency for land. P–23; D–215; D–216, D–334.

37. Additionally, gaining access to the Yakama Reservation for purposes of building a railroad to Puget Sound was of vital importance to the United States and Stevens. P–23; D–216.

38. The United States believed that gaining Yakamas acquiescence to the roads across their reservation was a different and special case. The United States intended this road to be a major thoroughfare to the coast and accordingly was willing to accommodate many of the demands of the Yakamas. P–14, D–218; P–15, D–344; P–23; D–291.

39. Stevens sent Captain George McClellan, Andrew Bolon, and James Doty to meet with the Yakamas. These men explained in general terms the intent of the federal government to treat with the

Yakamas and described the anticipated provisions of the Treaty. P–14, D–218; P–15; D–344; P–17, D–335; P–24, D–348.

40. Statements by Governor Stevens and his employees prior to the Treaty negotiations and the statements of Governor Stevens and General Palmer at the Treaty negotiations reflect the importance to the United States of roads and railroad building across the Yakama Reservation. P–2; P–14, D–218; P–15, D–344; P–16; P–17, D–335; P–23; P–24, D–348.

41. Stevens' representatives found Indians who spoke Chinook jargon to interpret for them with the Yakamas and other Indians during the Treaty negotiations, even though Chinook jargon was not the primary language of any tribe. P–2; P–17, D–335; Walker testimony at pp. 38–40.

42. The Treaty proceedings formally commenced on May 29, 1855, in the Walla Walla Valley in southeastern Washington. In addition to Stevens and General Joel Palmer, Superintendent of Indian Affairs for the Oregon Territory, approximately sixty non-Indians were present. Over 1800 tribal members, including Yakamas, attended. P–2.

43. At the treaty negotiations, a primary concern of the Indians was that they have freedom to move about to fish, hunt, and gather, and trade. P–2.

44. Stevens represented to the tribes that entering into a Treaty with the United States would protect the tribes from "bad white men" and enhance their standards of living by providing agricultural equipment and training, blacksmiths, carpentry shops, and schools. P–2 at pp. 39–41, 49, 52–53.

Stevens guaranteed that the terms of a Treaty would be "carried out strictly." P–2 at p. 55.

45. In discussing the purpose for the creation and placement of the Yakama Reservation, Stevens told the assembled Indians:

> I will give briefly the reason for selection [of] these two reservations. We think they are large enough to furnish each man and each family with a farm, and grazing for all your animals. There is especially in winter grazing on both reservations. There is plenty of Salmon on these Reservations, there are roots and berries, there is also some game. You will be near the great road and can take

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> your horses and your cattle down the river and to the Sound to market.

P–2 at p. 64.

46. Stevens repeatedly assured the Yakamas that they would be allowed to travel the public roads outside the Reservation "to pasture animals on land not occupied by whites, to kill game, to get berries and to go on the roads to market. P–2 at p. 69; *see also* P–2 at pp. 44, 67, 98.

47. Palmer reiterated the statements made by Stevens when he stated: "My Brother has stated that you will be permitted to travel the roads outside the Reservation." P–2 at p. 70. He further commented:

> Now as we give you the privilege of traveling over roads, we want the privilege of making and traveling roads through your country, but

> whatever roads we make through your country will not be for injury.

P–2 at p. 71.

48. The statements of General Palmer reflect that in consideration for allowing the Yakamas to travel on the public highways, the United States bargained for the right to run highways and railroads inside the reservation. P–2 at pp. 70–71.

49. General Palmer's statements assured the Yakamas that roads across the reservation would be of no injury to the Tribe. P–2 at p. 71.

50. In reliance on the promises made by Stevens and Palmer, the Yakamas agreed to enter into the Treaty on June 9, 1855.

51. The Minutes of the Treaty proceeding reflect that the issue of highway travel by the Yakamas outside their reservation was broached several times, reflecting the importance of off-reservation travel to the Yakamas.

52. The Minutes of the Treaty proceedings contain no mention of restrictions upon the right of travel on the public highways, nor is there mention of the possible assessment of fees for that travel. P–2.

53. After the Treaty was concluded, the Yakama Indians continued to travel and fish much as they had prior to Treaty negotiations. P–26, D–224; P–30, D–237; P–44, D–250; D–223.

54. The State of Washington did not impose any licensing or vehicle registration fees for road purposes until at least 1905.

55. In 1932, approximately 128 Indian-owned vehicles were licensed pursuant to Washington law. However, it was estimated that on-reservation Indians owned approximately 500 vehicles during that year. P–47, D–451.

56. In 1986, the Yakama Nation Tribal Council enacted a regulation providing for Tribal regulation of member owned vehicles. D–280.

57. The Yakama Nation and its members consistently objected to State schemes of taxation for the purpose of building roads across the Reservation and state financing proposals that would charge the Yakamas. Yallup testimony at pp. 54–55; P–40; P–45, D–450; P–48, D–465.

58. Since the inception of Tiin–Ma Logging's log hauls, plaintiff Kip Ramsey has protested the defendant's registration, licensing and tonnage fee collection system.

59. Individual plaintiffs previously and successfully litigated their Treaty right to travel in state and federal court. P–51; P–52; P–53. In each case, a court found that Washington truck licensing and permitting fees violated plaintiffs' Treaty travel rights.

60. Article III, paragraph 1, secures rather than re-

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stricts the Yakamas' right to travel the public highways "in common with" non-Indians. However, neither the Treaty language nor statements made during the Treaty negotiations define the scope of "in common with." No equivalent of this phrase exists in

Chinook jargon. P–1; P–55; P–56; Walker testimony at p. 24. At best, the Yakamas had a rudimentary understanding of the phrase "in common with."

61. In the Yakama language, the term "in common with" would suggest public use or general use without restriction. Therefore, as the Yakamas understood this term, no impediment would be placed on their right to travel. The most the Indians would have understood, reading the Treaty as a whole and its interpretive Minutes, of the term "in common with" and "public" was that they would share the use of the roads with whites. Walker testimony at 30.

62. Reading of the Treaty language as a whole reflects that the term "public highways" should be read with its common understanding, meaning a road open to all or for common usage.

63. Stevens and his representatives, both prior to and at the Treaty negotiations, clearly indicated that the roads they were discussing with the Indians were "public" roads open to all the settlers. P–2; P–17, D–335 at pp. 4, 7, 11, 14, 15; P–23; P–24, D–348.

64. The term "in common with" in Article III implies that the Indian and non-Indian use will be joint but does not imply that the Indian use will be in any way restricted.

65. Stevens and Palmer promised, and the Indians understood, that the Yakamas would forever be able to continue the same off-reservation food gathering and fishing practices as to time, place, method, and extent.

66. Stevens' and Palmer's statements regarding the Yakama's use of the public highways to take their goods to market clearly and without ambiguity promised the Yakamas the use of public highways without restriction for future trading endeavors.

67. The "great roads" referred to by Governor Stevens in the Treaty Minutes included proposed roads across the Yakama Reservation which were intended to provide access to Puget Sound. There was no suggestion that the Yakamas use of them would be restricted in any way. P–2 at pp. 64, 76.

68. The language of Article III of the Treaty reflects the promises made by Stevens and Palmer in the Treaty discussions and guarantees to the Yakamas the right of free use of the public highways. P–1; P–2.

69. The minutes of the Treaty proceedings reflect that unrestricted travel upon the public highways outside reservation boundaries was an issue of significant importance to both the Yakamas and Governor Stevens. P–2.

70. The Minutes of the Treaty proceedings and the language of Article III reflect no restrictions upon the right of the Yakamas to use the public highways, either for traditional practices of fishing, hunting, gathering and trade, or for future economic endeavors. P–1; P–2.

71. The fishery language of Article III, paragraph 2, is identical to the public highway language contained in Article III, paragraph 1. P–1. Nothing appears in the factual record which would

lead the court to interpret the identical public highway language differently than the manner in which the fishery language has been interpreted.

72. In the historical context of the Treaty, including Stevens' mission to free vast amounts of land for settlement as quickly as possible and the Yakamas' reluctance in entering a treaty with the United States, it is unlikely that Stevens intended to restrict the Yakamas travel in any significant manner.

73. No evidence suggests that Stevens communicated an intent to restrict the Yakamas' right to travel for fishing,

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hunting, gathering, and trade purposes. Further, Stevens did not communicate an intention to assimilate Yakamas with non-Indians or otherwise place the Yakamas on "equal footing" with non-Indians.

74. Evidence suggests that Stevens intended to rely upon federal funds for the construction of roads in Washington Territory. D–334.

75. The branding of horses was not a method of "registering" the Yakamas' method of transportation for purposes of State regulation. D–297. Rather, the branding of horses was a means whereby Yakama Indians and others could identify their horses and cattle. The branding of horses by Yakama Indians is not inconsistent with the Yakamas' claim of free travel upon the public highways.

76. No evidence shows that the Yakamas utilized toll roads or ferries prior to the Treaty. Moreover, the Barlow Road toll charge was the exception rather than the rule at the time of the Treaty. Richards testimony at pp. 122.

77. Even if the Yakamas had paid tolls for use of the Barlow Road or ferries, such actions would not be inconsistent with their claimed Treaty right to travel, because payment of such tolls was not within the context of Treaty negotiations.

78. The fact that plaintiffs did not assert a Treaty travel right with respect to hauling tribal goods to market until 1981 does not diminish their claimed right. Individual plaintiffs did not begin hauling goods off-reservation to outside markets until the 1970s.

79. The challenged truck licensing and permitting fees are revenue-raising rather than regulatory in nature. Ct. Rec. 133. The regulatory purpose of these fees can be accomplished without the imposition of fees because plaintiffs maintain they will remain subject to the weight regulations so long as a fee is not imposed. Further, plaintiffs will not contest a fine imposed for violations of the weight regulations.

80. The Treaty right to travel, although secured to the Yakama Indian Nation, can be exercised by its individual members, and any Yakama-owned and operated corporation or business, which is tribally licensed.

81. The Yakama Nation's retained sovereignty under its Treaty includes the right to

regulate the conduct of its members in the exercise of Treaty rights both on and off the Yakama Reservation. *Settler v. Lameer*, 507 F.2d 231 (9th Cir. 1974).

82. The Yakama Nation's retained sovereignty under the Treaty reserves to it the right to determine what activities its members may exercise off the Reservation.

83. The Yakama Indian Nation has the autonomy to regulate and exercise this right through the use of member and non-member agents or employees. However, the Yakama Nation's sovereign right to regulate the exercise of Treaty rights does not preclude the state's registration requirements for trucks, so long as the licensing and permitting fees are not imposed.

84. The Yakama Indian Nation, its members, any Yakama-owned or operated corporations or business, and any non-members engaged in the exercise of the Yakama Indian Nation's Treaty right to travel must comply with state regulations designed to preserve and maintain the public roads and highways to the extent that those regulations do not impose a fee or surcharge on the Treaty right to travel on said public roads or highways.

85. The Yakama Nation, its member, any Yakama-owned or operated corporation or business, must comply with state registration requirements solely for identification purposes to the extent that such requirements do not impose a fee or surcharge on the Treaty right to travel.

86. Washington State has no statutory system to pro-rate licensing, registration or tonnage fees to reflect on

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and off reservation use by Indian-owned trucks based on the mileage driven in each jurisdiction.

87. The apportionment system proposed by defendants which allows for purchase of fees only during the time of use of an Indian-owned trucks off-reservation costs the same for a tribal member as it does for a non-Indian who has no exemption for on-reservation use. Therefore, Washington state licensing and permitting fees are not tailored to account for actual off-reservation use by Indian-owned trucks.

88. Plaintiffs possess a special sovereignty interest in hauling tribal goods, derived wholly from reservation resources, to off-reservation markets.

89. Under relevant Supreme Court caselaw, fees imposed on Indian-owned vehicles for the use of state highways must be apportioned to account for actual off-reservation use.

90. The state's registration, licensing, and permitting fees for trucks are not apportioned to account for on-reservation travel, and therefore are preempted by federal law.

* * * * *

TREATY WITH THE YAKAMAS.
JUNE 9, 1855.

Treaty between the United States and the Yakama Nation of Indians. Concluded at Camp Stevens, Walla-Walla Valley, June 9, 1855. Ratified by the Senate, March 8, 1859. Proclaimed by the President of the United States, April 18, 1859.

JAMES BUCHANAN,

PRESIDENT OF THE UNITED STATES OF AMERICA,

TO ALL AND SINGULAR TO WHOM THESE PRESENTS SHALL COME, GREETING: June 9, 1855.

Preamble

WHEREAS a treaty was made and concluded at the Treaty Ground, Camp Stevens, Walla-Walla Valley, on the ninth day of June, in the year one thousand eight hundred and fifty-five, between Isaac I. Stevens, governor, and superintendent of Indian affairs, for the Territory of Washington, on the part of the United States, and the hereinafter named head chief, chiefs, headmen and delegates of the Yakama, Palouse, Pisquouse, Wenatshapam, Klikatat, Klinquit, Kow-was-say-ee, Li-ay-was, Skin-pah, Wish-ham, Shyiks, Oche-chotes, Kah-milt-pah, and Se-ap-cat, confederate tribes and bands of Indians, occupying lands lying in Washington Territory, who, for the purposes of this treaty, are to be considered as one

nation, under the name of "Yakama," with Kamaiakun as its Head Chief, on behalf of and acting for said bands and tribes, and duly authorized thereto by them ; which treaty is in the words and figures following, to wit :

Contracting parties.

Articles of agreement and convention made and concluded at the treaty ground, Camp Stevens, Walla-Walla Valley, this ninth day of June, in the year one thousand eight hundred and fifty-five, by and between Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, on the part of the United States, and the undersigned head chief, chiefs, headmen and delegates of the Yakama, Palouse, Pisquouse, Wenatshapam, Klikatat, Klinquit, Kow-was-say-ee, Li-ay-was, Skin-pah, Wish-ham, Shyiks, Oche-chotes, Kah-milt-pah, and Se-ap-cat, confederated tribes and bands of Indians, occupying lands hereinafter bounded and described and lying in Washington Territory, who for the purposes of this treaty are to be considered as one nation, under the name of " Yakama," with Kamaiakun as its head chief, on behalf of and acting for said tribes and bands, and being duly authorized thereto by them.

Cession of lands to the United States.

ARTICLE I. The aforesaid confederated tribes and bands of Indians hereby cede, relinquish, and convey to

the United States all their right, title, and interest in and to the lands and country occupied and claimed by them, and bounded and described as follows, to wit :

Boundaries.

Commencing at Mount Ranier, thence northerly along the main ridge of the Cascade Mountains to the point where the northern tributaries of Lake Che-lan and the southern tributaries of the Methow River have their rise ; thence southeasterly on the divide between the waters of Lake Che-lan and the Methow River to the Columbia River ; thence, crossing the Columbia on a true east course, to a point whose longitude is one hundred and nineteen degrees and ten minutes, (119° 10',) which two latter lines separate the above confederated tribes and bands from the Oakinakane tribe of Indians ; thence in a true south course to the forty-seventh (47°) parallel of latitude ; thence east on said parallel to the main Palouse River, which two latter lines of boundary separate the above confederated tribes and bands from the Spokanes ; thence down the Palouse River to its junction with the Moh-hah-ne-she, or southern tributary of the same ; thence, in a southesterly direction, to the Snake River, at the mouth of the Tucannon River, separating the above confederated tribes from the Nez Percé tribe of Indians ;

thence down the Snake River to its junction with the Columbia River ; thence up the Columbia River to the "White banks," below the Priest's rapids ; thence westerly to a lake called "La Lac;" thence southerly to a point on the Yakama River called Toh-mah-luke ; thence, in a southwesterly direction, to the Columbia River, at the western extremity of the "Big Island," between the mouths of the Umatilla River and Butler Creek ; all which latter boundaries separate the above confederated tribes and bands from the Walla-Walla, Cayuse, and Umatilla tribes and bands of Indians ; thence down the Columbia River to midway between the mouths of White Salmon and Wind Rivers ; thence along the divide between said rivers to the main ridge of the Cascade Mountains ; and thence along said ridge to the place of beginning.

Reservation.

ARTICLE II. There is, however, reserved, from the lands above ceded for the use and occupation of the aforesaid confederated tribes and bands of Indians, the tract of land included within the following boundaries, to wit :

Boundaries.

Commencing on the Yakama River, at the mouth of the Attah-nam River ; thence westerly along said Attah-nam River to the forks ; thence along the southern tributary to the Cascade

Mountains ; thence southerly along the main ridge of said mountains, passing south and east of Mount Adams, to the spur whence flows the waters of the Klickatat and Pisco rivers ; thence down said spur to the divide between the waters of said rivers ; thence along said divide to the divide separating the waters of the Satass River from those flowing into the Columbia River ; thence along said divide to the main Yakama, eight miles below the mouth of the Satass River ; and thence up the Yakama River to the place of beginning.

Reservation to be set apart, &c. and Indians to settle thereon;

whites not to reside thereon.

All which tract shall be set apart, and, so far as necessary, surveyed and marked out, for the exclusive use and benefit of said confederated tribes and bands of Indians, as an Indian reservation ; nor shall any white man, excepting those in the employment of the Indian Department, be permitted to reside upon the said reservation without permission of the tribe and the superintendent and agent. And the said confederated tribes and bands agree to remove to, and settle upon, the same, within one year after the ratification of this treaty. In the mean time it shall be lawful for them to reside upon any ground not in the actual claim and occupation of citizens of the United States ; and upon any ground claimed or

occupied, if with the permission of the owner or claimant.

Guaranteeing, however, the right to all citizens of the United States, to enter upon and occupy as settlers any lands not actually occupied and cultivated by said Indians at this time, and not included in the reservation above named.

Improvements to be paid for by the United States.

And provided, That any substantial improvements heretofore made by any Indian, such as fields enclosed and cultivated, and houses erected upon the lands hereby ceded, and which he may be compelled to abandon in consequence of this treaty, shall be valued, under the direction of the President of the United States, and payment made therefor in money ; or improvements of an equal value made for said Indian upon the reservation. And no Indian will be required to abandon the improvements aforesaid, now occupied by him, until their value in money, or improvements of an equal value shall be furnished him as aforesaid.

Roads may be made.

ARTICLE III. *And provided*, That, if necessary for the public convenience, roads may be run through the said reservation ; and on the other hand, the right of way, with free access from the same to the nearest public highway, is secured to them ; as also the right, in

common with citizens of the United States, to travel upon all public highways.

Privileges secured to Indians.

The exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians, as also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory, and of erecting temporary buildings for curing them ; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.

Payments by the United States ;

ARTICLE IV. In consideration of the above cession, the United States agree to pay to the said confederated tribes and bands of Indians, in addition to the goods and provisions distributed to them at the time of signing this treaty, the sum of two hundred thousand dollars, in the following manner, that is to say : sixty thousand dollars, to be expended under the direction of the President of the United States, the first year after the ratification of this treaty, in providing for their removal to the reservation, breaking up and fencing farms, building houses for them, supplying them with provisions and a suitable outfit, and for such other objects as he may deem necessary, and the

remainder in annuities, as follows : for the first five years after the ratification of the treaty, ten thousand dollars each year, commencing September first, 1856 ; for the next five years, eight thousand dollars each year; for the next five years, six thousand dollars per year ; and for the next five years, four thousand per year.

how to be applied.

All which sums of money shall be applied to the use and benefit of said Indians, under the direction of the President of the United States, who may from time to time determine, at his discretion, upon what beneficial objects to expend the same for them. And the superintendent of Indian affairs, or other proper officer, shall each year inform the President of the wishes of the Indians in relation thereto.

United Stats to establish schools,

ARTICLE V. The United States further agree to establish at suitable points within said reservation, within one year after the ratification hereof, two schools, erecting the necessary buildings, keeping them in repair, and providing them with furniture, books, and stationery, one of which shall be an agricultural and industrial school, to be located at the agency, and to be free to the children of the said confederated tribes and bands of Indians, and to employ one superintendent of teaching and two teachers ; to build two

blacksmiths' shops, to one of which shall be attached a tin shop, and to the other a gunsmith's shop; one carpenter's shop, one wagon and ploughmaker's shop, and to keep the same in repair and furnished with the necessary tools; to employ one superintendent of farming and two farmers, two blacksmiths, one tinner, one gunsmith, one carpenter, one wagon and ploughmaker, for the instruction of the Indians in trades and to assist them in the same; to erect one saw-mill and one flouring-mill, keeping the same in repair and furnished with the necessary tools and fixtures; to erect a hospital, keeping the same in repair and provided with the necessary medicines and furniture, and to employ a physician; and to erect, keep in repair, and provided with the necessary furniture, the buildings required for the accommodation of the said employees. The said buildings and establishments to be maintained and kept in repair as aforesaid, and the employees to be kept in service for the period of twenty years.

mechanics' shops,

saw-mill and flouring-mill,

hospital.

Salary to head chief; house, &c

And in view of the fact that the head chief of the said confederated tribes and bands of Indians is expected, and will be called upon, to perform many services of a public character, occupying much of his time, the United States further agree to pay to the said confederated tribes and bands of Indians five hundred

dollars per year, for the term of twenty years after the ratification hereof, as a salary for such person as the said confederated tribes and bands of Indians may select to be their head chief ; to build for him at a suitable point on the reservation a comfortable house and properly furnish the same, and to plough and fence ten acres of land. The said salary to be paid to, and the said house to be occupied by, such head chief so long as he may continue to hold that office.

Kamaiakun is the head chief.

And it is distinctly understood and agreed that at the time of the conclusion of this treaty Kamaiakun is the duly elected and authorized head chief of the confederated tribes and bands aforesaid, styled the Yakama nation, and is recognized as such by them and by the commissioners on the part of the United States holding this treaty ; and all the expenditures and expenses contemplated in this article of this treaty shall be defrayed by the United States, and shall not be deducted from the annuities agreed to be paid to said confederated tribes and bands of Indians. Nor shall the cost of transporting the goods for the annuity payments be a charge upon the annuities, but shall be defrayed by the United States.

Reservation may be surveyed into lots, and assigned to individuals or families.

The President may, from time to time, at his discretion, cause the whole or such portions of such reservation as he may think proper, to be surveyed into lots and assigned the same to such individuals or families of the said confederated tribes and bands of Indians as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable.

Vol. x. p. 1044.

Annuities not to pay debts of individuals.

ARTICLE VII. The annuities of the aforesaid confederated tribes and bands of Indians shall not be taken to pay the debts of individuals.

Tribes to preserve friendly relations;

ARTICLE VIII. The aforesaid confederated tribes and bands of Indians acknowledge their dependence upon the government of the United States, and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations upon the property of such citizens.

to pay for depredations;

And should any one or more of them violate this pledge, and the fact be satisfactorily proved before the agent, the property taken shall be returned, or in default thereof, or if injured or destroyed, compensation may be made by the government out of the annuities.

not to make war but in self-defence ;

Nor will they make war upon any other tribe, except in self-defence, but will submit all matters of difference between them and other Indians to the government of the United States or its agent for decision, and abide thereby. And if any of the said Indians commit depredations on any other Indians within the Territory of Washington or Oregon, the same rule shall prevail as that provided in this article in case of depredations against citizens. And the said confederated tribes and bands of Indians agree not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial.

to surrender offenders.

Annuities may be withheld from those who drink ardent spirits.

ARTICLE IX. The said confederated tribes and bands of Indians desire to exclude from their reservation the use of ardent spirits, and to prevent their people from drinking the same, and, therefore, it is provided that any Indian belonging to said confederated tribes and bands of Indians, who is guilty of bringing liquor into said reservation, or who drinks liquor, may have his or her annuities withheld from him or her for such time as the President may determine.

Wenatshapam fishery reserved.

ARTICLE X. *And provided*, That there is also reserved and set apart from the lands ceded by this treaty, for the use and benefit of the aforesaid

confederated tribes and bands, a tract of land not exceeding in quantity one township of six miles square, situated at the forks of the Pisquouse or Wenatshapam River, and known as the "Wenatshapam fishery," which said reservation shall be surveyed and marked out whenever the President may direct, and be subject to the same provisions and restrictions as other Indian reservations.

When treaty to take effect.

ARTICLE XI. This treaty shall be obligatory upon the contracting parties as soon as the same shall be ratified by the President and Senate of the United States.

Signatures, June 9, 1855.

In testimony whereof, the said Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, and the under signed head chief, chiefs, headmen, and delegates of the aforesaid confederated tribes and bands of Indians, have hereunto set their hands and seals, at the place and on the day and year hereinbefore written.

ISAAC I. STEVENS,
Governor and Superintendent. [L.S.]

KAMAIAKUN,	his x mark.	[L.S.]
SKLOOM,	his x mark.	[L.S.]
OWHI,	his x mark.	[L.S.]
TE-COLE-KUN,	his x mark.	[L.S.]
LA-HOOM,	his x mark.	[L.S.]

ME-NI-NOCK,	his x mark.	[L.S.]
ELIT PALMER,	his x mark.	[L.S.]
WISH-OCH-KMPITS,	his x mark.	[L.S.]
KOO-LAT-TOOSE,	his x mark.	[L.S.]
SHEE-AH-COTTE,	his x mark.	[L.S.]
TUCK-QUILLE,	his x mark.	[L.S.]
KA-LOO-AS,	his x mark	[L.S.]
SCHA-NOO-A,	his x mark.	[L.S.]
SLA-KISH,	his x mark.	[L.S.]

Signed and sealed in presence of —
James Doty, *Secretary Of Treaties*,
Mie. Cles. Pandosy, *O.M.T.*,
Wm. C. McKay,
W.H. Tappan, *Sub Indian Agent, W.T.*,
C. Chirouse, *O.M.T.*,
Patrick McKenzie, *Interpreter*,
A.D. Pamburn, *Interpreter*,
Joel Palmer, *Superintendent Indian Affairs, O.T.*,
W.D. Biglow,
A.D. Pamburn, *Interpreter*.

Ratification, March 8, 1859

And whereas, the said treaty having been submitted to the Senate of the United States for its constitutional action thereon, the said Senate did, on the eighth day of March, one thousand eight hundred and fifty-nine, advise and consent to the ratification of the same by a resolution in the words and figures following, to wit :

"IN EXECUTIVE SESSION,
"SENATE OF THE UNITED STATES,
March 8, 1859.

"*Resolved*, (two thirds of the senators present concurring,) That the Senate advise and consent to the ratification of treaty between the United States and the head chief, chiefs, headmen, and delegates of the Yakama, Palouse, and other confederated tribes and bands of Indians, occupying lands lying in Washington Territory, who, for the purposes of this treaty, are to be considered as one nation, under the name of "Yakama," with Kamaiakun as its head chief, signed 9th June, 1855.

"Attest : "ASBURY DICKINS, *Secretary*."

Proclamation, April 18, 1859.

Now, therefore, be it known that I, JAMES BUCHANAN, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in their resolution of March eighth, one thousand eight hundred and fifty-nine, accept, ratify, and confirm the said treaty.

In testimony whereof, I have hereunto caused the seal of the United States to be affixed, and have signed the same with my hand.

Done at the city of Washington, this eighteenth day of April, in the year of

[SEAL.]

our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the eighty-third.

JAMES BUCHANAN

By the President :
Lewis Cass, *Secretary of State.*

REVISED YAKAMA CODE ch. 30.11 (2009)

CHAPTER 30.11 - LICENSING RULES AND PENALTIES FOR PETROLEUM

30.11.01: EXERCISE OF POWER AND AUTHORITY.

The provisions of this Chapter shall be deemed an exercise of the power and authority delegated to the Yakama Tribal Council by the Yakama General Council (T-38-56) to regulate business.

[Annotation: Enacted by T-38-89]

[Division of Code Revision Note: New RYC Section Added; and Clarification, "resolution" to "Chapter"]

30.11.02: LICENSE AND EFFECTIVE DATE.

On and after the 17th day of January 1989, no tribal member shall engage in the sale, or distribution of petroleum products on land under the jurisdiction of the Yakama Nation without first having obtained and being the holder of a valid and sustaining Tribal License, visibly displayed in the place of business. An enrolled Yakama petroleum products retailer may sell to another enrolled Yakama without assessing or collecting state fuel tax and/or excise tax. However, the seller must assess state fuel tax and/or excise taxes in a sale transaction involving a non-Yakama unless the sale transaction is to a person intending to use the petroleum for off-road purposes and is exempt under Washington State law. In such a sales transaction, the seller need not assess state fuel taxes. The Yakama Nation will not regulate the collection of the state fuel tax in otherwise taxable sale transaction.

[Annotation: Enacted by T-38-89; Amended by T-053-94; Amended by T-172-99; & Amended by Exec. Memo 06-29-1999]

[Division of Code Revision Note: New RYC Section Added; and Clarification, "resolution" to "Chapter"; and Effective Date Clarified]

30.11.03: PENALTY PROVISIONS.

Any person who shall violate any of the provisions of this Chapter shall be deemed guilty of a violation of the laws of the Yakama Nation and shall be subject to imprisonment in the Tribal Jail for not more than ninety (90) days and pay a fine of not more than Three Hundred Fifty Dollars ($350) and/or both such fine and imprisonment, and have his license revoked.

[Annotation: Enacted by T-38-89; Amended by T-053-94; Amended by T-172-99; & Amended by Exec. Memo 06-29-1999]

[Division of Code Revision Note: New RYC Section Added; and Clarification, "resolution" to "Chapter"]

30.11.04: APPLICATION.

The complete application for a Tribal Petroleum Permit under this Chapter shall be made to the Tax Accountant/Revenue Officer, for submission to the Yakama Nation Law and Order Committee for review and recommendation for approval by the Yakama Tribal Council and shall contain the following information:

a. Name, age, date of birth, Yakama enrollment number, Certification of Indian blood.

b. The applicants current residence and information of residence for the past five years.

c. The proposed place of business and the allotment number of said property. And a copy of lease agreement, if applicant is not the land owner.

d. The applicant's financial statement.

e. A copy of a Yakama Nation Business License, which is valid and current.

f. The applicant's employment history for the past five years.

g. A statement as to whether the applicant owns or has interest in trust or restricted lands within the Yakama Reservation and if so, a description of said property.

h. A statement as to whether the applicant has ever been convicted of a felony, filed for bankruptcy, or has a prior violation of any permit privilege with the Yakama Nation.

Any misrepresentations shall be a cause for revocation of the permit application/current permit.

[Annotation: Enacted by T-150-98; Amended by T-053-94; Amended by T-172-99; Amended by Exec. Memo 06-29-1999; & Amended by GC-01-07]

[Division of Code Revision Note: New RYC Section Added; and Clarification, "resolution" to "Chapter"; Clerical error corrected, "to" added]

30.11.05: LICENSE TO ISSUE.

In determining whether a license shall issue, the Yakama Tribal Council shall take into consideration ownership of the property, location of the place of business and the financial stability, experience, and the existence or lack of a criminal record of the applicant. The owner and operator of the business shall be Yakamas.

[Annotation: Enacted by T-38-89; Amended by T-053-94; Amended by T-172-99; & Amended by Exec. Memo 06-29-1999]

[Division of Code Revision Note: New RYC Section Added]

30.11.06: LICENSE EXPIRATION AND DISCLOSURES.

A Tribal license to sell petroleum products shall be applied for annually, on or before the 30th day of September. Applicants shall provide at the time of application a notarized statement setting forth income derived from such sales; and further, applicants shall provide the names of all employees and amount of income earned by each. The applicant shall make a full financial disclosure which shall demonstrate financial solvency and demonstrate complete compliance with the Tribal tax requirements.

[Annotation: Enacted by T-38-89; Amended by T-053-94; Amended by T-172-99; & Amended by Exec. Memo 06-29-1999]

[Division of Code Revision Note: New RYC Section Added]

30.11.07: EXAMINATION.

The applicant shall understand that the Yakama Tribal Council may examine the books and records of the licensees at any time and furthermore, the applicant shall maintain a recording system detailing all expenses, sales and adjustments to his or her inventory, pursuant to the direction of the Tribal Council or its agents.

[Annotation: Enacted by T-38-89; Amended by T-053-94; Amended by T-172-99; & Amended by Exec. Memo 06-29-1999]

[Division of Code Revision Note: New RYC Section Added]

30.11.08: EMPLOYMENT PREFERENCE.

Licensees shall give Yakamas employment preference but this section shall be in compliance with the Tribal Employment Rights Ordinance.

[Annotation: Enacted by T-38-89; Amended by T-053-94; Amended by T-172-99; & Amended by Exec. Memo 06-29-1999]

[Division of Code Revision Note: New RYC Section Added]

[Division of Code Revision Comment: The Tribal Employment Rights Ordinance is codified under Title 71]

30.11.09: LICENSE.

The granting of a tribal license pursuant to this Chapter shall authorize the licensee to sell petroleum products to any person. Any violation of this prohibition shall be subject to the penalty provisions

of Section 30.11.03 set forth hereinabove. Membership within the Tribe shall be verified by enrollment card or signed statements of membership.

[Annotation: Enacted by T-38-89; Amended by T-053-94; Amended by T-172-99; & Amended by Exec. Memo 06-29-1999]

[Division of Code Revision Note: New RYC Section Added; and Clarification, "resolution" to "Chapter"]

30.11.10: ADMINISTRATIVE FEES.

Licensees will pay administrative fee(s) and a tax according to a scaled tax on petroleum products to the Yakama Nation. Licensees pursuant to this Chapter are required to include this tax as part of the cost of the gasoline sold or distributed. The tax scale and tax assessed will be set from time to time by the Executive Committee with appropriate recommendations of the Law and Order Committee. Provide that no tax or administrative fees shall be assessed with regard to sales of petroleum products to non-members upon which state fuel and excise taxes are collected.

[Annotation: Enacted by T-38-89; Amended by T-053-94; Amended by T-172-99; Amended by Exec. Memo 06-29-1999; & Amended by GC-01-07]

[Division of Code Revision Note: New RYC Section Added]

30.11.11: BENEFIT - PETROLEUM.

Licensees, pursuant to this Chapter shall insure that no direct benefit be derived by any person not a member of the Yakama nation as a result of the sale

of petroleum products or other merchandise in conjunction with the business operation authorized by such a license.

[Annotation: Enacted by T-38-89; Amended by T-053-94; Amended by T-172-99; & Amended by Exec. Memo 06-29-1999]

[Division of Code Revision Note: New RYC Section Added; and Clarification, "resolution" to "Chapter"]

30.11.12: REVENUE - PETROLEUM.

The revenues received by the Yakama Nation as a result of the license fees and fuel tax described hereinabove, shall be a benefit to the health, safety and general welfare of all residents of the Yakama Reservation.

[Annotation: Enacted by T-38-89; Amended by T-053-94; Amended by T-172-99; & Amended by Exec. Memo 06-29-1999]

[Division of Code Revision Note: New RYC Section Added]

30.11.13: FAILURE TO COMPLY AND EFFECTIVE DATE - PETROLEUM.

Any licensee who fails to comply with the terms of this Chapter shall have his license revoked. Written notification of the grounds for said revocation shall be given at least five days prior to a hearing held before the Law and Order Committee to determine if this Chapter has been violated. This Chapter shall be effective on this 17th day of January 1989.

[Annotation: Enacted by T-38-89]

[Division of Code Revision Note: New RYC Section Added; and Clarification, "resolution" to "Chapter"]

30.11.14: ADMINISTRATION.

This Chapter will be administered by the designated Law and Order Committee of the Yakama Nation Tribal Council.

[Annotation: Enacted by T-38-89; Amended by T-053-94; Amended by T-172-99; Amended by Exec. Memo 06-29-1999; & Amended by GC-01-07]

[Division of Code Revision Note: New RYC Section Added; and Clarification, "ordinance" to "Chapter"]

30.11.15: LIABILITY.

The Yakama Nation Tribal Council enacts this Chapter pursuant to its taxing and policy power as a sovereign. The Yakama Nation is not in privity with any applicant. The Yakama Nation will not represent or counsel any applicant who incurs any tortious, statutory, or contractual liability towards a third party.

[Annotation: Enacted by T-38-89; Amended by T-053-94; Amended by T-172-99; & Amended by Exec. Memo 06-29-1999]

[Division of Code Revision Note: New RYC Section Added; and Clarification, "resolution" to "Chapter"]

Confederated Tribes and Bands of the Yakima Indian Nation — Established by the Treaty of June 9, 1855

PETROLEUM PRODUCTS LICENSE RESPONSIBILITIES

WHEREAS, Cougar Den, Inc. is a Yakima Indian owned corporation incorporated by Resolution No. T-48-92 of the Yakima Tribal Council under Revised Yakima Code § 30.05.07 on January 3, 1992, and licensed as a Tribal business on January 21, 1993, and

WHEREAS, Cougar Den, Inc. was issued a Petroleum License pursuant to Resolution No. T-38-89, November 15, 1992, and

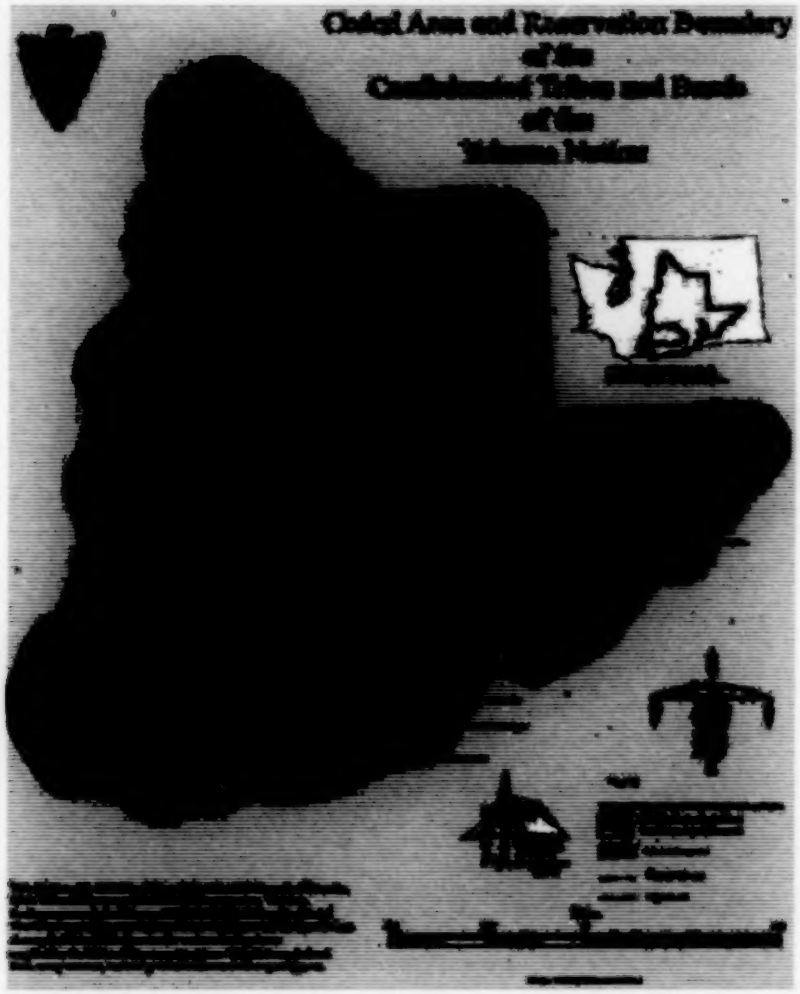
WHEREAS, Yakima Tribal Council Resolution Nos. T-144-88 and T-38-89 require the collection of a petroleum products tax in the amount of $0.55 per gallon of petroleum products sold as a condition of Tribal licensing,

NOW, THEREFORE, I Lonnie Selam, Secretay [*sic*] of the Tribal Council of the Yakima Indian Nation certify that it shall be the responsibility of the said Cougar Den, Inc. to serve as an agent of the Yakima Indian Nation for the purpose of collecting and transmitting Tribal taxes to the Yakima Indian Nation on a monthly basis and for the purpose of obtaining petroleum products for sale and delivery to the Yakima Indian Nation and its members. Cougar Den shall obtain no financial interest in such taxes collected.

DONE AND DATED this 29th day of September, 1993.

s/ Lonnie Selam, Sr.
Lonnie Selam, Sr., Secretary
Yakima Tribal Council
Yakima Indian Nation

Post Office Box 151, Fort Road, Toppenish, WA 98948 (509) 865-5121


Ordal Area and Reservation Boundary
of the
Confederated Tribes and Bands
of the
Yakima Nation

IN THE SUPERIOR COURT OF WASHINGTON
FOR YAKIMA COUNTY

COUGAR DEN INC., a Yakama Nation corporation, Petitioner, v. DEPARTMENT OF LICENSING OF THE STATE OF WASHINGTON, Respondent.	Case No.: 14-2-03851-7 DECLARATION OF HARRY SMISKIN

I, Harry Smiskin, am over the age of 18, have personal knowledge of all the facts stated herein and declare as follows:

1. I am a member of the Yakama Nation. In 2013, I was the Chairman of the Yakama Nation Tribal Council, the governing body that runs the day to day functions of the Yakama Nation.

2. Throughout the year in 2013, the Yakama Nation and the Washington State Department of Licensing met on multiple occasions to mediate a dispute over the collection of fuel taxes.

3. In keeping with Yakama law and custom, any agreement between the Yakama Nation and the Department of Licensing would need to be signed by me and then ratified by the Yakama Nation's General Council, made up of all adult members of the Nation. I signed two agreements, but the General Council rejected those agreements on March 13, 2014.

4. True and correct copies of the two agreements, a Settlement Agreement and Fuel Tax

Agreement Concerning Taxation of Motor Vehicle Fuel and Special Fuel Between the Confederated Tribes and Bands of the Yakama Nation and the State of Washington, are attached as Attachments A and B.

5. During the mediation process, I attended each mediation session as a representative of the Yakama Nation. Pat Kohler, Director of the Department of Licensing, also attended the sessions as the representative of the Department.

6. At issue at the mediation sessions and in our two pending lawsuits (one in Yakama Nation Tribal Court and one in U.S. District Court) was whether the Treaty of 1855 exempted the Yakama Nation from the Department's fuel taxes. The Yakama Nation, which I represented, insisted that Article III of the Treaty preempts the fuel taxes of the Department. On the other side, Ms. Kohler and the Department argued that the Treaty did not apply to taxes on imported fuel, even if the fuel was brought on state roads. I felt like Ms. Kohler and the Department took too narrow a reading of our Treaty.

7. Nonetheless, in an attempt to resolve our dispute and the pending lawsuits, Ms. Kohler and I signed the two agreements. I signed on behalf of the Yakama Nation, and Ms. Kohler signed on behalf of the Department of Licensing. As mentioned, the General Council rejected those agreements on March 13, 2014, and so they never took effect. A true and correct copy of the General Council resolution is attached as Attachment C.

8. While Chairman, I was also present on January 17, 2014 when Governor Inslee signed a proclamation of retrocession, the return of civil and

criminal authority to the Yakama Nation. That proclamation was the result of a 2012 petition by the Yakama Nation that I oversaw as Chairman of the Tribal Council. A true and correct copy of that proclamation is attached as Attachment D.

I declare under penalty of perjury under the laws of the State of Washington (applicable only as to the procedure for submitting this declaration) that the foregoing is true and correct.

EXECUTED at the city of *Wapato, Wa* this *8* day of *January, 2015*.

s/ Harry Smiskin
Harry Smiskin

Confederated Tribes and Bands of the Yakima Indian Nation — Established by the Treaty of June 9, 1855

General Council Memorandum

TO: Yakama Tribal Council Executive Committee
Tribal Council Members
David Shaw, BIA Superintendent

FROM: *s/ Jo Anna Meninick*
Jo Anna Meninick, Chairwoman
Yakama Nation General Council

DATE: April 2, 2014

RE: Notification of Certification of 3rd Set of Current Official General Council Motion/Resolution

This notice of the Yakama Tribal Council serves as a certification of the attached General Council Motion GCM-10-2014 that was passed at the Annual General Council Session on March 13, 2014. Included is the Resolution GC-03-2014.

If you have any further questions regarding this notification please contact my office at ext. 4302.

G.C. Motions	Subject
GCM-10-2014	To reaffirm veto T-002-2014 and to rescind the fuel tax agreement. MOTION PASSED
GC-03-2014	Veto on T-002-2014

Cc: Yakama Tribal Council (14)
Yakama Nation Review

Confederated Tribes and Bands of the Yakima Indian Nation — Established by the Treaty of June 9, 1855

GCM-10-2014

"ANNUAL GENERAL COUNCIL MEETING"

LOCATION: TOPPENISH COMMUNITY CENTER

OFFICIAL COUNT (ENROLLED MEMBERS - 18 YEARS OLD & OVER): 254

DATE: March 13, 2014 TIME: 4:10 P.M.

MOTION MADE BY: Carl George ROLL#5035

I MAKE A MOTION: to reaffirm veto T-002-2014 and to rescind the fuel tax agreement.

SECONDED BY: Jack Fiander ROLL#4261

DISCUSSION: Members spoke on supporting this motion and are concerned if there is a plan set in place.

CALL FOR THE QUESTION: Adrienne Wilson ROLL#604

RESULTS: MOTION PASSED.

VOTE FOR: 210
VOTE AGAINST: 0
ABSTAIN: 44

GENERAL COUNCIL: *s/ Jo Anna Meninick*
Jo Anna Meninick, Chairwoman

ATTEST: *s/ George Selam*
George Selam, Secretary/Treasurer

cc: Tribal Council
Yakama Nation Review

Confederated Tribes and Bands of the Yakima Indian Nation — Established by the Treaty of June 9, 1855

RESOLUTION GC-03-2014

WHEREAS, the Yakama Nation is a federally recognized sovereign pursuant to the Treaty of 1855 (12 Stat. 951) as "Supreme Law of the Land", and

WHEREAS, the General Council is the Supreme Governing body of Fourteen Confederated Tribes and Bands of the Yakama Nation, and

WHEREAS, the General Council pursuant to the provisions of Resolution dated February 18, 1944 and GC-02-81 decides "Matters of Great Importance", and

WHEREAS, the General Council assembly acting in the Annual General Council meeting in Regular Session approved GCM-11-2012 and its accompanying Resolution GC-07-2012 which stated that the Yakama Nation General Council is to exercise authority with regard to any fuel tax related issues in order to "make any decision as needed" on behalf of the Yakama Nation, and

WHEREAS, the Yakama Nation Tribal Court, in case No. C-08-11, R-08-33 (July 28, 2008), has affirmed that No Compact Agreements or similar agreements are deemed valid and enforceable without the State of Washington having first received written verification by Yakama Nation General Council Resolution or other similar valid notification that any such agreements have been approved by the General Council Assembly, with proper notice given as an

agenda item, with a quorum present, vote taken approving any such agreements between the Yakama Nation and the State of Washington, and

WHEREAS, on October 2, 2013 the Tribal Council in chambers voted on and passed Resolution T-002-14 which stated that the Yakama Nation was agreeing to accept a Settlement Agreement and enter into a new Fuel Tax Consent Decree Agreement with the State of Washington without having obtained a Yakama Nation General Council Resolution or other similar valid notification that such Agreement had been approved by the General Council Assembly, and

WHEREAS, on October 7, 2013 the General Council Executive Officers issued by memorandum to the Tribal Council Executive Board official notice that T-002-14 was not to be implemented in any way because it was deemed "Matters of Great Importance", and that a Special Session for General Council meeting was being scheduled for the first week in November for the General Council Body to review and such Agreements, pursuant to GCM-32-94, GCM-11-2012, GC-07-2012, and Case No. C-08-11, R-08-33 (July 28, 2008), and

WHEREAS, on November 7, 2013 by memorandum the General Council Executive Officers issued official notice to the Tribal Council and B.I.A. Superintendent that they had Vetoed T-002-14 in accordance with their Veto Power authority under GCM-32-94, and requested that all parties will comply with the Veto action, and

WHEREAS, on November 18, 2013 in violation of the Tribal Court's decision in Case No. C-08-11, R-08-33 (July 28, 2008) and in violation of the Veto issued

November 7, 2013, the Yakama Nation Tribal Council Chairman together with the fuel task force composed of Tribal Council officials, signed into a Settlement Agreement and Fuel Tax Agreement with the Director of the Washington State Department of Licensing, and

WHEREAS, the Tribal Council's November 18, 2013 Settlement Agreement and Fuel Tax Agreement violates Tribal and Federal Law which states Yakama Nation tribal members are exempt from Washington State fuel taxes, and

WHEREAS, on November 19, 2013 the Yakama Nation General Council sent a letter to the Attorney General of Washington State notifying the state that the Yakama Nation General Council Executive Officers Vetoed the Settlement Agreement and Fuel Tax Agreements because both Agreements were not in the best interest of the Yakama Nation General Council and both Agreements were not in compliance with the Yakama Nation Tribal Laws, and

WHEREAS, on March 13, 2014 the General Council meeting in regular session reviewed and discussed the Settlement Agreement and Fuel Tax Agreement and did not agree to, nor approve of the terms, provisions and conditions of the Agreements negotiated by the Tribal Council and Washington State, and

WHEREAS, on March 13, 2014 the General Council meeting in regular session discussed, voted on and approved GCM-10-2014, to reaffirm the General Council Executive Officers' Veto on Resolution T-002-14, and acted to rescind Tribal Council's November 18, 2013 Settlement Agreement and Fuel Tax Agreement with the State of Washington, and

NOW THEREFORE BE IT RESOLVED, that the Yakama Nation General Council meeting in a regular session, with a quorum being present voted on and approved GCM-10-2014 by a vote of **210** For, **0** Against, **44** Abstain to reaffirm the General Council Executive Officers Veto of T-002-14, and rescinds Yakama Nation Tribal Council's Settlement Agreement and Fuel Tax Consent Agreement with the State of Washington, and

BE IT FINALLY RESOLVED, that the Yakama Nation does not waive, alter, or otherwise diminish or Sovereign Immunity whether expressed or implied by enacting this resolution, nor does the Yakama Nation waive, alter or otherwise diminish the rights, privileges, remedies or services guaranteed by the Treaty of 1855.

DONE AND DATED THIS 21st day of March 2014 by the Yakama Nation General Council in regular session at the Toppenish Community Center.

s/ Jo Anna Meninick,
Jo Anna Meninick, Chairwoman
Yakama Nation General Council

ATTEST:

s/ George Selam
George Selam, Secretary/Treasurer
Yakama Nation General Council

PROCLAMATION BY THE GOVERNOR 14-01

WHEREAS, on March 19, 2012, Governor Christine Gregoire signed Engrossed Substitute House Bill 2233, "Creating a procedure for the state's retrocession of civil and criminal jurisdiction over Indian tribes and Indian country"; and

WHEREAS, Engrossed Substitute House Bill 2233, which became Chapter 48, Laws of 2012, creates a process by which the state of Washington (hereafter, "the State") may retrocede to the United States all or part of the civil and criminal jurisdiction previously acquired by the State over a federally recognized Indian tribe, and the Indian country of such tribe, under federal Public Law 280, Act of August 15, 1953; and

WHEREAS, on March 13, 1963, in accordance with federal Public Law 280, Act of August 15, 1953, the State assumed partial civil and criminal jurisdiction, subject to the limitations in RCW 37.12.021 and RCW 37.12.060, within the Indian country of the Confederated Tribes and Bands of the Yakama Nation (hereafter, "Yakama Nation") pursuant to Chapter 36, Laws of 1963; and

WHEREAS, after March 13, 1963, the Yakama Nation did not invoke with the State the provision of RCW 37.12.021 but chose to rely upon the rights and

remedies of its Treaty of 1855 with the United States, 12 Stat. 951 and federal laws; and

WHEREAS, on January 11, 1980, the Assistant Secretary-Indian Affairs, United States Department of the Interior, approved the Yakama Nation's petition for re-assumption of jurisdiction over Indian child custody proceedings under the Indian Child Welfare Act of 1978. Effective March 28, 1980, the Yakama Nation reassumed jurisdiction over Yakama Indian child custody proceedings; and

WHEREAS, on July 17, 2012, the Yakama Nation filed a retrocession petition with the Office of the Governor. The retrocession petition by the Yakama Nation requests full retrocession of civil and criminal jurisdiction on all of Yakama Nation Indian country and in five areas of RCW 37.12.010, including: Compulsory School Attendance; Public Assistance; Domestic Relations; Juvenile Delinquency; and Operation of Motor Vehicles on Public Streets, Alleys, Roads, and Highways; and

WHEREAS, Governor Gregoire convened government-to-government meetings with the Yakama Nation to discuss the Nation's retrocession petition. In the course of those meetings, the Yakama Nation and Governor Gregoire confirmed that the Yakama Nation asks the State to retrocede all jurisdiction assumed pursuant to RCW 37.12.010 in 1963 over the Indian country of the Yakama Nation, both within and without the external boundaries of the Yakama Reservation. However, the Yakama Nation requests that the State retain jurisdiction over mental illness as provided in RCW 37.12.010(4), and jurisdiction over civil commitment of sexually violent predators

under RCW 71.09, and acknowledges that the State would retain criminal jurisdiction over non-Indian defendants; and

WHEREAS, Governor Jay Inslee convened further government-to-government meetings between the State and Yakama Nation. The Governor's Office has also consulted with elected officials from the jurisdictions proximately located to the Yakama Nation's Indian country; and

WHEREAS, on July 9, 2013, Governor Inslee exercised the six-month extension provision for issuing a proclamation, pursuant to RCW 37.12.160; and

WHEREAS, strengthening the sovereignty and independence of the federally recognized Indian tribes within Washington State is an important priority for the State; and

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, by virtue of the authority vested in me by Section 37.12.160 of the Revised Code of Washington, do hereby grant in part, and deny in part, the retrocession petition submitted by the Confederated Tribes and Bands of the Yakama Nation, according to the following provisions:

1. Within the exterior boundaries of the Yakama Reservation, the State shall retrocede full civil and criminal jurisdiction in the following subject areas of RCW 37.12.010: Compulsory School Attendance; Public Assistance; Domestic Relations; and Juvenile Delinquency.
2. Within the exterior boundaries of the Yakama Reservation, the State shall retrocede, in part, civil

and criminal jurisdiction in Operation of Motor Vehicles on Public Streets, Alleys, Roads, and Highways cases in the following manner: Pursuant to RCW 37.12.010(8), the State shall retain jurisdiction over civil causes of action involving non-Indian plaintiffs, non-Indian defendants, and non-Indian victims; the State shall retain jurisdiction over criminal offenses involving non-Indian defendants and non-Indian victims.

3. Within the exterior boundaries of the Yakama Reservation, the State shall retrocede, in part, criminal jurisdiction over all offenses not addressed by Paragraphs 1 and 2. The State retains jurisdiction over criminal offenses involving non-Indian defendants and non-Indian victims.

4. Jurisdiction over Indian child custody proceedings under RCW 37.12.010(3) and Adoption proceedings and Dependent Children pursuant to RCW 37.12.010(6) and (7), which the Yakama Nation reassumed in 1980 under the Indian Child Welfare Act, shall remain under the exclusive jurisdiction of the Yakama Nation.

5. Outside the exterior boundaries of the Yakama Reservation, the State does not retrocede jurisdiction. The State shall retain all jurisdiction it assumed pursuant to RCW 37.12.010 in 1963 over the Yakama Nation's Indian country outside the Yakama Reservation.

6. Nothing herein shall affect the State's civil jurisdiction over the civil commitment of sexually violent predators pursuant to chapter 71.09 RCW and the State must retain such jurisdiction

notwithstanding the completion of the retrocession process authorized under RCW 37.12.160.

7. Pursuant to RCW 37.12.010, the State shall retain all jurisdiction not specifically retroceded herein within the Indian country of the Yakama Nation.

8. This Proclamation does not affect, foreclose, or limit the Governor's authority to act on future requests for retrocession under RCW 37.12.160.

Signed and sealed with the official seal of the state of Washington this 17th day of January, A.D. Two-thousand and Fourteen, at Olympia, Washington.

By:

/s/
Jay Inslee, Governor

BY THE GOVERNOR:

/s/
Secretary of State

Excerpts from Washington Revised Code
chapter 82.36 – Motor Vehicle Fuel Tax (2012)

(Chapter 82.36 was merged into chapter 82.38 effective July 1, 2016. *See* 2013 Wash. Sess. Laws page no. 1322 (ch. 225); 2015 Wash. Sess. Laws page no. 1178 (ch. 228, § 40)).

82.36.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

* * * * *

(3) "Bulk transfer" means a transfer of motor vehicle fuel by pipeline or vessel.

(4) "Bulk transfer-terminal system" means the motor vehicle fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Motor vehicle fuel in a refinery, pipeline, vessel, or terminal is in the bulk transfer-terminal system. Motor vehicle fuel in the fuel tank of an engine, motor vehicle, or in a railcar, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer-terminal system.

(5) "Department" means the department of licensing.

(6) "Director" means the director of licensing.

* * * * *

(9) "Highway" means every way or place open to the use of the public, as a matter of right, for the purpose of vehicular travel.

(10) "Import" means to bring motor vehicle fuel into this state by a means of conveyance other than the fuel supply tank of a motor vehicle.

* * * * *

(12) "Licensee" means a person holding a motor vehicle fuel supplier, motor vehicle fuel importer, motor vehicle fuel exporter, motor vehicle fuel blender, motor vehicle distributor, or international fuel tax agreement license issued under this chapter.

* * * * *

(14) "Motor vehicle fuel distributor" means a person who acquires motor vehicle fuel from a supplier, distributor, or licensee for subsequent sale and distribution.

* * * * *

(16) "Motor vehicle fuel importer" means a person who imports motor vehicle fuel into the state by a means other than the bulk transfer-terminal system. If the importer of record is acting as an agent, the person for whom the agent is acting is the importer. If there is no importer of record, the owner of the motor vehicle fuel at the time of importation is the importer.

(17) "Motor vehicle fuel supplier" means a person who holds a federal certificate of registry that is issued under the internal revenue code and authorizes the person to enter into federal tax-free transactions on motor vehicle fuel in the bulk transfer-terminal system.

(18) "Motor vehicle" means a self-propelled vehicle designed for operation upon land utilizing motor vehicle fuel as the means of propulsion.

(19) "Motor vehicle fuel" means gasoline and any other inflammable gas or liquid, by whatsoever name the gasoline, gas, or liquid may be known or sold, the chief use of which is as fuel for the propulsion of motor vehicles or motorboats.

(20) "Person" means a natural person, fiduciary, association, or corporation. The term "person" as applied to an association means and includes the partners or members thereof, and as applied to corporations, the officers thereof.

* * * * *

(22) "Rack" means a mechanism for delivering motor vehicle fuel from a refinery or terminal into a truck, trailer, railcar, or other means of nonbulk transfer.

* * * * *

(24) "Removal" means a physical transfer of motor vehicle fuel other than by evaporation, loss, or destruction.

(25) "Terminal" means a motor vehicle fuel storage and distribution facility that has been assigned a terminal control number by the internal revenue service, is supplied by pipeline or vessel, and from which reportable motor vehicle fuel is removed at a rack.

* * * * *

82.36.020 Tax levied and imposed—Rate to be computed—Incidence—Distribution. (1) There is hereby levied and imposed upon motor vehicle fuel licensees, other than motor vehicle fuel distributors, a tax at the rate computed in the manner provided in RCW 82.36.025 on each gallon of motor vehicle fuel.

(2) The tax imposed by subsection (1) of this section is imposed when any of the following occurs:

(a) Motor vehicle fuel is removed in this state from a terminal if the motor vehicle fuel is removed at the rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state;

(b) Motor vehicle fuel is removed in this state from a refinery if either of the following applies:

(i) The removal is by bulk transfer and the refiner or the owner of the motor vehicle fuel immediately before the removal is not a licensee; or

(ii) The removal is at the refinery rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state;

(c) Motor vehicle fuel enters into this state if either of the following applies:

(i) The entry is by bulk transfer and the importer is not a licensee; or

(ii) The entry is not by bulk transfer;

(d) Motor vehicle fuel is sold or removed in this state to an unlicensed entity unless there was a prior taxable removal, entry, or sale of the motor vehicle fuel;

(e) Blended motor vehicle fuel is removed or sold in this state by the blender of the fuel. The number of gallons of blended motor vehicle fuel subject to the tax is the difference between the total number of gallons of blended motor vehicle fuel removed or sold and the number of gallons of previously taxed motor vehicle fuel used to produce the blended motor vehicle fuel;

(f) Motor vehicle fuel is sold by a licensed motor vehicle fuel supplier to a motor vehicle fuel distributor, motor vehicle fuel importer, motor vehicle fuel blender, or international fuel tax agreement licensee and the motor vehicle fuel is not removed from the bulk transfer-terminal system.

(3) The proceeds of the motor vehicle fuel excise tax shall be distributed as provided in RCW 46.68.090.

82.36.022 Tax imposed—Intent. It is the intent and purpose of this chapter that the tax shall be imposed at the time and place of the first taxable event and upon the first taxable person within this state. Any person whose activities would otherwise require payment of the tax imposed by RCW 82.36.020 but who is exempt from the tax nevertheless has a precollection obligation for the tax that must be imposed on the first taxable event within this state. Failure to pay the tax with respect to a taxable event shall not prevent tax liability from arising by reason of a subsequent taxable event.

* * * * *

82.36.026 Tax liability—General. (1) A licensed supplier shall be liable for and pay tax to the department as provided in RCW 82.36.020. On a two-party exchange, or buy-sell agreement between two licensed suppliers, the receiving exchange partner or buyer shall be liable for and pay the tax.

(2) A refiner shall be liable for and pay tax to the department on motor vehicle fuel removed from a refinery as provided in RCW 82.36.020(2)(b).

(3) A licensed importer shall be liable for and pay tax to the department on motor vehicle fuel imported into this state as provided in RCW 82.36.020(2)(c).

(4) A licensed blender shall be liable for and pay tax to the department on the removal or sale of blended motor vehicle fuel as provided in RCW 82.36.020(2)(e).

(5) Nothing in this chapter shall prohibit the licensee liable for payment of the tax under this chapter from including as a part of the selling price an amount equal to the tax.

* * * * *

82.36.035 Computation and payment of tax—Remittance—Electronic funds transfer. (1) The tax imposed by this chapter shall be computed by multiplying the tax rate per gallon provided in this chapter by the number of gallons of motor vehicle fuel subject to the motor vehicle fuel tax.

* * * * *

82.36.045 Licensees, persons acting as licensees—Tax reports—Deficiencies, failure to file, fraudulent filings, misappropriation, or conversion—Penalties, liability—Mitigation—Reassessment petition, hearing—Notice.

* * * * *

(2) If a licensee, or person acting as such, fails, neglects, or refuses to file a motor vehicle fuel tax report the department shall, on the basis of information available to it, determine the tax liability of the licensee or person for the period during which no report was filed. The department shall add the penalty provided in subsection (1) of this section to the tax. An assessment made by the department under this subsection or subsection (1) of this section is presumed to be correct. In any case, where the validity of the assessment is questioned, the burden is on the person who challenges the assessment to establish by a fair preponderance of evidence that it is erroneous or excessive, as the case may be.

* * * * *

82.36.100 Tax required of persons not classed as licensees—Duties—Procedure—Distribution of proceeds—Penalties—Enforcement. Every person other than a licensee who acquires any motor vehicle fuel within this state upon which payment of tax is required under the provisions of this chapter, or imports such motor vehicle fuel into this state and sells, distributes, or in any manner uses it in this state shall, if the tax has not been paid, apply for a license to carry on such activities, comply with all the provisions of this chapter, and pay an excise tax at the rate computed in

the manner provided in RCW 82.36.025 for each gallon thereof so sold, distributed, or used during the fiscal year for which such rate is applicable. The proceeds of the tax imposed by this section shall be distributed in the manner provided for the distribution of the motor vehicle fuel excise tax in RCW 82.36.020. For failure to comply with this chapter such person is subject to the same penalties imposed upon licensees. The director shall pursue against such persons the same procedure and remedies for audits, adjustments, collection, and enforcement of this chapter as is provided with respect to licensees. Nothing in this section may be construed as classifying such persons as licensees.

* * * * *

82.36.230 Exemptions—Imports, exports, federal sales—Invoice—Certificate—Reporting. The provisions of this chapter requiring the payment of taxes do not apply to motor vehicle fuel imported into the state in interstate or foreign commerce and intended to be sold while in interstate or foreign commerce, nor to motor vehicle fuel exported from this state by a licensee . . . .

. . . For the purposes of this section, motor vehicle fuel distributed to a federally recognized Indian tribal reservation located within the state of Washington is not considered exported outside this state.

* * * * *

Excerpts from Washington Revised Code chapter 82.38 – Special Fuel Tax Act (2012)

(Chapter 82.38 was amended to cover motor vehicle fuel as well as special fuel effective July 1, 2016. *See* 2013 Wash. Sess. Laws page no. 1322 (ch. 225); 2015 Wash. Sess. Laws page no. 1178 (ch. 228, § 40)).

* * * * *

82.38.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

* * * * *

(4) "Bulk transfer-terminal system" means the special fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Special fuel in a refinery, pipeline, vessel, or terminal is in the bulk transfer-terminal system. Special fuel in the fuel tank of an engine, motor vehicle, or in a railcar, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer-terminal system.

(5) "Bulk transfer" means a transfer of special fuel by pipeline or vessel.

(6) "Bulk storage" means the placing of special fuel into a receptacle other than the fuel supply tank of a motor vehicle.

(7) "Department" means the department of licensing.

* * * * *

(11) "Highway" means every way or place open to the use of the public, as a matter of right, for the purpose of vehicular travel.

(12) "Import" means to bring special fuel into this state by a means of conveyance other than the fuel supply tank of a motor vehicle.

* * * * *

(15) "Licensee" means a person holding a license issued under this chapter.

(16) "Motor vehicle" means a self-propelled vehicle designed for operation upon land utilizing special fuel as the means of propulsion.

* * * * *

(18) "Person" means a natural person, fiduciary, association, or corporation. The term "person" as applied to an association means and includes the partners or members thereof, and as applied to corporations, the officers thereof.

* * * * *

(20) "Rack" means a mechanism for delivering special fuel from a refinery or terminal into a truck, trailer, railcar, or other means of nonbulk transfer.

* * * * *

(22) "Removal" means a physical transfer of special fuel other than by evaporation, loss, or destruction.

(23) "Special fuel" means and includes all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor vehicle fuel as

defined in chapter 82.36 RCW, nor does it include dyed special fuel as defined by federal regulations, unless the use is in violation of this chapter. . . .

(24) "Special fuel distributor" means a person who acquires special fuel from a supplier, distributor, or licensee for subsequent sale and distribution.

* * * * *

(26) "Special fuel importer" means a person who imports special fuel into the state by a means other than the bulk transfer-terminal system. If the importer of record is acting as an agent, the person for whom the agent is acting is the importer. If there is no importer of record, the owner of the special fuel at the time of importation is the importer.

(27) "Special fuel supplier" means a person who holds a federal certificate issued under the internal revenue code and authorizes the person to tax-free transactions on special fuel in the bulk transfer-terminal system

* * * * *

(29) "Terminal" means a special fuel storage and distribution facility that has been assigned a terminal control number by the internal revenue service, is supplied by pipeline or vessel, and from which reportable special fuel is removed at a rack.

* * * * *

82.38.030 Tax imposed—Rate—Incidence —Allocation of proceeds—Expiration of subsection. (1) There is hereby levied and imposed upon special fuel licensees, other than special fuel

distributors, a tax at the rate of twenty-three cents per gallon of special fuel . . . .

* * * * *

(7) Taxes are imposed when:

(a) Special fuel is removed in this state from a terminal if the special fuel is removed at the rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state, or the removal is by a special fuel supplier for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320;

(b) Special fuel is removed in this state from a refinery if either of the following applies:

(i) The removal is by bulk transfer and the refiner or the owner of the special fuel immediately before the removal is not a licensee; or

(ii) The removal is at the refinery rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state, or the removal is to a special fuel supplier for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320;

(c) Special fuel enters into this state for sale, consumption, use, or storage, unless the fuel enters this state for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320, if either of the following applies:

(i) The entry is by bulk transfer and the importer is not a licensee; or

(ii) The entry is not by bulk transfer;

(d) Special fuel is sold or removed in this state to an unlicensed entity unless there was a prior taxable removal, entry, or sale of the special fuel;

(e) Blended special fuel is removed or sold in this state by the blender of the fuel. The number of gallons of blended special fuel subject to tax is the difference between the total number of gallons of blended special fuel removed or sold and the number of gallons of previously taxed special fuel used to produce the blended special fuel;

(f) Dyed special fuel is used on a highway, as authorized by the internal revenue code, unless the use is exempt from the special fuel tax;

(g) Dyed special fuel is held for sale, sold, used, or is intended to be used in violation of this chapter;

(h) Special fuel purchased by an international fuel tax agreement licensee under RCW 82.38.320 is used on a highway; and

(i) Special fuel is sold by a licensed special fuel supplier to a special fuel distributor, special fuel importer, or special fuel blender and the special fuel is not removed from the bulk transfer-terminal system.

82.38.031 Tax imposed—Intent. It is the intent and purpose of this chapter that the tax shall be imposed at the time and place of the first taxable event and upon the first taxable person within this state. Any person whose activities would otherwise require payment of the tax imposed by RCW 82.38.030 but who is exempt from the tax nevertheless has a precollection obligation for the tax that must be imposed on the first taxable event within this state. Failure to pay the tax with respect to a taxable event shall not prevent tax liability from arising by reason of a subsequent taxable event.

* * * * *

82.38.035 Tax liability. (1) A licensed supplier shall be liable for and pay tax on special fuel to the department as provided in RCW 82.38.030(7)(a). On a two-party exchange, or buy-sell agreement between two licensed suppliers, the receiving exchange partner or buyer shall be liable for and pay the tax.

(2) A refiner shall be liable for and pay tax to the department on special fuel removed from a refinery as provided in RCW 82.38.030(7)(b).

(3) A licensed importer shall be liable for and pay tax to the department on special fuel imported into this state as provided in RCW 82.38.030(7)(c).

(4) A licensed blender shall be liable for and pay tax to the department on the removal or sale of blended special fuel as provided in RCW 82.38.030(7)(e).

(5) A licensed dyed special fuel user shall be liable for and pay tax to the department on the use of dyed special fuel as provided in RCW 82.38.030(7)(f).

(6) Nothing in this chapter prohibits the licensee liable for payment of the tax under this chapter from including as a part of the selling price an amount equal to such tax.

* * * * *

82.38.160 Computation and payment of tax—Remittance—Electronic funds transfer. (1) The tax imposed by this chapter shall be computed by multiplying the tax rate per gallon provided in this chapter by the number of gallons of special fuel subject to the special fuel tax.

* * * * *

82.38.170 Civil and statutory penalties and interest—Deficiency assessments. . . .

* * * * *

(3) If any licensee, whether or not he or she is licensed as such, fails, neglects, or refuses to file a special fuel tax report required under this chapter, the department may, on the basis of information available to it, determine the tax liability of the licensee for the period during which no report was filed, and to the tax as thus determined, the department shall add the penalty and interest provided in subsection (2) of this section. An assessment made by the department pursuant to this subsection or to subsection (2) of this section shall be presumed to be correct, and in any case where the validity of the assessment is drawn in question, the burden shall be on the person who

challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be.

* * * * *

Washington Administrative Code section 308-77-005 (2011)

Definitions. (1) "Special fuel" as defined in RCW 82.38.020(23) includes diesel fuel, propane, natural gas, kerosene, biodiesel, and any other combustible liquid or gas by whatever name the liquid or gas may be known or sold for the generation of power to propel a motor vehicle on the highways except fuel that is subject to the tax imposed by chapter 82.36 RCW.

* * * * *